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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 15-CR-637 (KAM)
:
Plaintiff, :
: United States Courthouse
-against- : Brooklyn, New York
:
MARTIN SHKRELI, :
: Thursday, July 27, 2017
Defendant. : 9:00 a.m.
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
BEFORE THE HONORABLE KIYO A. MATSUMOTO
UNITED STATES DISTRICT JUDGE, AND A JURY

A P P E A R A N C E S:

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Proceedings recorded by Stenographic machine shorthand,
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Proceedings

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1 (In open court; outside the presence of the jury.)

2 THE COURT: All right. Just for the record, what
3 I am going to do is clarify yesterday's ruling, and note
4 that the defendant, if necessary, may renew its Rule 29
5 motion. And we will bring the jurors in once we are all
6 here and advise them that the case will proceed to oral
7 argument and summations after the Government rests and the
8 defendant rests, all right?

9 MR. BRAFMAN: Yes, Your Honor.

10 THE COURT: I think we are about ready, we may
11 have one missing juror.

12 (Pause in proceedings.)

13 (Jurors enter.)

14 (Jury present.)

15 THE COURT: Good morning, members of the jury.

16 All are present. Please have a seat.

17 Does the Government have any further witnesses or
18 evidence to present?

19 MS. KASULIS: No, Your Honor, the Government
20 rests.

21 THE COURT: Thank you. And does the defendant
22 wish to present a case?

23 MR. BRAFMAN: No, Your Honor, the defendant rests.
24 Thank you, Your Honor.

25 THE COURT: Given that the parties have rested and

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1 have competed the presentation of evidence, you will now
2 hear summations, or closing arguments. Let me remind you
3 that those summations, or closing arguments, are not
4 evidence but rather they are each party's opportunity to
5 summarize the evidence and to argue about what conclusions
6 and findings you should make based on the evidence that was
7 admitted at the trial.

8 So with that, we will hear first from the
9 Government. Then we will hear from the defense, and the
10 Government will have an opportunity for rebuttal.

11 Are you ready to proceed?

12 MS. SMITH: Yes, Your Honor.

13 THE COURT: All right. Thank you.

14 BY MS. SMITH:

15 Just about one month ago, my colleague,
16 Mr. Srinivasan, stood before you and told you how the
17 defendant told lies, upon lies, upon lies in connection with
18 four related fraud schemes that he and his co-conspirators
19 carried out over a period of years. He told you that the
20 evidence would show that the defendant lied to investors in
21 MSMB Capital and MSMB Healthcare in order to get them to
22 invest in the funds and that he told more lies to prevent
23 them taking their money out of the funds

24 He told you that the evidence would show that when
25 some of the investors in the funds weren't happy with how the

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1 funds performed because they believed the defendant's lies
2 the defendant doubled down using another fraudulent scheme to
3 force Retrophin to pay for those lies.

4 And he told you that the evidence would prove
5 beyond a reasonable doubt that the defendant also engaged in
6 a fraud to try and control the price and trading volume of
7 Retrophin stock and that he lied about who actually owned the
8 free-trading shares of the company. That is exactly what we
9 have done. Other the past month you've heard testimony from
10 defrauded investors, Board members of Retrophin, former
11 employees of the MSMB entities and others who had information
12 to share about the defendant's frauds. You have seen bank
13 records and shared transfer records, read countless e-mails
14 and performance updates and reviewed settlement and
15 consulting agreements. It is now my job to help step you
16 through the evidence and fully expose the defendant's
17 schemes.

18 To pull back the curtain on these four fraud
19 schemes and finally see the truth behind all of those lies.
20 And to show you that we've proved the charges against the
21 defendant beyond a reasonable doubt. Keep in mind as we go
22 through this evidence that you are in a very unique position.
23 Other than the defendant and his co-conspirators, you are the
24 only people who know the whole story of what happened. The
25 people who testified before you, they each had a piece of

1 that story, but none of them knew the whole truth because of
2 how often and how effectively the defendant told his lies

3 For example, the investors in MSMB Capital and
4 MSMB Healthcare, to this day, they have no idea what really
5 happened to the money they invested in those funds. They
6 have never seen the bank records or the share transfer
7 records. All of the information they got about how the funds
8 performed came from the defendant, and it was false. Only
9 you have access to that information and so only you can see
10 the whole picture. And that's what we're going to do
11 together this morning, we're going to walk through each piece
12 of the evidence

13 Now I'm not going to address every witness or every
14 document because then we would be here for another month, but
15 I'm going to highlight for you the key evidence and tell you
16 how it tells the story of the defendant's frauds and how it
17 proves beyond a reasonable doubt that the defendant is guilty
18 of each and every crime with which he has been charged.

19 I'm going to start for each crime with a legal
20 element. Judge Matsumoto is going to instruct you on the law
21 after all the summations are completed, and what she tells
22 you is what controls, then I'm going to preview with respect
23 to what she's going to say about what we need to show for
24 each crime that's been charged.

25 This chart here gives you an overview of the eight

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1 counts in the indictment. The first column just lists the
2 count number, which is where each of those crimes will appear
3 on the verdict sheet that you look at as you deliberate.

4 The second column will list the schemes to which
5 the crime relates. Of course.

6 THE COURT: Sorry.

7 MS. SMITH: That's okay.

8 BY MS. SMITH:

9 Hopefully we'll have limited technical difficulties
10 today, and this is not sanctioned so hopefully it's easier to
11 actually see the document

12 So the first column, as I said, lists the counts
13 which, again, is how you will track these crimes on the
14 verdict sheet.

15 The second column lists the scheme, the four
16 schemes; MSMB Capital, MSMB Healthcare, the Retrophin
17 appropriation scheme and then the Retrophin unrestricted
18 shares scheme. And you can see that we've grouped them by
19 color so that the first three counts all relate to the first
20 scheme; the fourth, fifth and sixth counts relate to the
21 second scheme; and then the 7th and 8th counts are their own
22 scheme.

23 And then the final column lists the specific type
24 of crime that's charged, either securities fraud conspiracy,
25 wire fraud conspiracy or securities fraud. And you can see

1 that some of the same crimes are charged for a different
2 scheme.

3 I'll be putting the chart up at the end of the
4 discussion of each scheme so that we can kind of keep track
5 of where we are. Before I go any further, let me also
6 mention that you won't get to take the PowerPoint slides that
7 I'm going go through with you back into the jury room.
8 That's because these are just summaries of the evidence. You
9 are entitled to ask for any of the evidence that you've seen
10 throughout the trial, either exhibits or testimony, and
11 you'll get an exist list that will actually describe for you
12 all the evidence that's been admitted. And as I go through
13 these slides I have tried to actually highlight the Exhibit
14 Number or the place in the transcript where the testimony had
15 come from so that you can take notes on that as we go
16 through.

17 So let's start with the first scheme, the
18 MSMB Capital scheme. And what exactly is this scheme? It
19 consists basically of two major portions. First the
20 defendant's made -- the defendant made misrepresentations and
21 omissions to MSMB Capital investors to get them to invest in
22 the funds and we've listed some of those omissions and
23 misrepresentations here and you've heard them from the
24 investor themselves. He was not truthful about the assets
25 under management of the fund; whether or not the fund had an

1 auditor, an attorney or an administrator; the ability of
2 investors to get redemptions from the funds; the composition
3 of the funds, whether it was a long, short, hedge fund; or
4 whether it was invested what we've all been talking about as
5 a liquid security. And also the defendant was not truthful
6 about his track record or his background, and those are all
7 the misrepresentations that he made in order to get people to
8 invest in the funds before the investors actually put their
9 money in.

10 The second set of misrepresentations that's charged
11 in this scheme are the misrepresentations that the defendant
12 made to the investors after they put their money in, in order
13 to get them to keep their money in the funds and not seek to
14 redeem them, and those are the false performance updates and
15 the false statement about the ability to redeem funds.

16 The time period for the scheme is September 2009 to
17 September of 2014. September 2009, of course, is when the
18 defendant launched the fund. The first investments were in
19 October. And the misrepresentations continued with the
20 performance updates well into 2012. And then as you'll see
21 once we move into 2013, there were additional
22 misrepresentations about what the fund had actually invested
23 in, how the fund has performed.

24 This scheme is charged in three different ways with
25 three different crimes. The first one is a securities fraud

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1 conspiracy, the second one is wire fraud conspiracy, and the
2 third count is securities fraud. The evidence is the same
3 for all three counts, but I am going to walk you through, as
4 I said, what we expect Judge Matsumoto will tell you about
5 the elements of each count so you can keep that in mind as we
6 walk through the evidence

7 So we'll start first with the element of securities
8 fraud, which is charged as Count 3 and then securities fraud
9 conspiracy is charged with Count 1, but these are the
10 underlying elements of the count.

11 So first in connection with the purchase or sale of
12 the security in MSMB Capital, the defendant employed a
13 device, scheme, or artifice to defraud or made an untrue
14 statement of a material fact or omitted to state a material
15 fact necessary in order to make the statements made in light
16 of the circumstances under which they were made in the
17 pleading or engaged in an act, practice, or course of
18 business, that operated or would operate as a fraud or deceit
19 upon a purchaser or fellow, and that is, of course, listed in
20 there.

21 The second element is that the defendant acted
22 willfully, knowingly and with the intent to defraud.

23 And then the third element is that the defendant
24 knowingly used or caused to be used any means of
25 transportation or communication in interstate commerce or the

1 use of the mail in furtherance of the fraudulent conduct.

2 And we'll talk about that really briefly at the
3 end, but that's, you know, a phone call or an e-mail, some
4 sort of communication that crossed the state line.

5 And as set forth in the private placement memos
6 that we have seen a lot of over the last month, interest in
7 MSMB Capital, so when you invest in MSMB Capital you were
8 purchased a security. So that's why this is the charged with
9 both as a wire fraud and as a securities fraud. And two of
10 the three counts are charged as conspiracy. Count 1 is
11 charged with securities fraud conspiracy and Count 2 is
12 charged with a wire fraud conspiracy, and so I just want to
13 also walk you through the law on conspiracy so you know what
14 to keep an eye out for.

15 A conspiracy is simply an agreement between two or
16 more people who violate the law. And the elements are that
17 the conspiracy existed to commit the charged crime and that
18 the defendant knowingly and intentionally joined the
19 conspiracy.

20 And for securities fraud conspiracy we also need to
21 prove that the defendant or one of his co-conspirators
22 committed one or more overt acts to further the object of the
23 conspiracy, and we'll walk through that again at the end. An
24 overt act can be something as simple as sending an e-mail.

25 And then for Count 2 which charges a wire fraud

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1 conspiracy, and so the elements of the conspiracy are just
2 that there was an agreement to commit wire fraud and that the
3 defendant knowingly joined in that agreement. But I'm going
4 to go through the elements underlying wire fraud so you can
5 understand what that crime is as well.

6 So for wire fraud, the idea is that there was a
7 scheme or artifice to defraud to obtain money or property by
8 false or fraudulent pretenses, representations or promises.

9 So basically obtaining money through lies.

10 Is second element is that the defendant knowingly
11 and willfully participated in a scheme or artifice to
12 defraud, and the third element is that in the execution of
13 the scheme the defendant used or caused to use an interstate
14 wire.

15 So let's start with the evidence for this scheme.
16 And let's start with the very first witness that you heard
17 from about a month ago, Sarah Hassan who was an investor in
18 MSMB Capital. And just to remind you because it has been
19 awhile, you heard that Ms. Hassan graduated from college
20 early and that she worked to invest her own personal money
21 and that she also ran a family hedge fund which is called
22 Dynagrow Capital, that she met the defendant in December
23 of 2010 and that he pitched her on investing in MSMB Capital
24 over dinner, and that she invested \$300,000 of her personal
25 money in MSMB Capital in January of 2011. And that cite

1 there is the Government Exhibit cite, it's
2 Government Exhibit 502B. Everything in the 500's are just
3 the bank records that we walked through with Wendy Spaulding,
4 so you'll be able to see which document shows you where the
5 money was actually going.

6 And so let's talk about the misrepresentation, the
7 lies, that the defendant told Sarah Hassan in order to get
8 her to invest in the fund. So first of all the defendant
9 said that MSMB Capital had \$40 million of AUM, or as we've
10 heard, assets under management when we were at dinner in
11 September of 2010. So he basically said that fund had
12 \$40 million at the time that she was looking to invest.

13 And this is Ms. Hassan's testimony at transcript
14 cite, Page 921. And you can see that she was asked, What did
15 you discuss in particular about MSMB Capital and she
16 responded, He just went over some of -- I guess the basics
17 with me about it. He told me it was a 40 to
18 50 million-dollar fund.

19 And she clarified later that she understood that to
20 be 40 or \$50 million in the fund at the time she was looking
21 to invest.

22 And she also then repeated that statement in an
23 e-mail that she sent to the defendant after the dinner and
24 that e-mail is Government Exhibit 103-38, and there was a
25 discussion in that e-mail about how the defendant ran the

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1 fund, if you remember, they were talking about that because
2 Ms. Hassan was running her own family fund and she was kind
3 of curious to see how the defendant made certain decisions.
4 And in that e-mail with respect after the dinner on
5 December 27th, 2010, she said, Remember you mentioned your
6 fund is about \$40 million. And there's a response from the
7 defendant to this e-mail where they have a back and forth
8 about different decisions he makes with the fund and he did
9 not correct this 40 million-dollar figure in that e-mail.

10 And as we know the AUM of \$40 million was a lie.
11 This is Government Exhibit 520 which is a summary chart for
12 MSMB Capital which shows the total amount in the bank and
13 brokerage accounts for MSMB Capital at the end of every
14 month, and this particular section on the screen shows
15 between September of 2009 and December of 2010. And if you
16 look in November 2010, so the end of the month in
17 November 2010, Ms. Hassan and the defendant had dinner in
18 December of 2010, so on November 30th, 2010, there's \$330 in
19 bank and brokerage account for MSMB Capital. So it is clear
20 that when the defendant said that it was a 40 to
21 50 million-dollar fund, that was a lie.

22 And the other reason we know that is because as you
23 heard Agent Braconi testify, the defendant provided some
24 testimony to the SEC, and in August of 2013 he said that
25 MSMB Capital never had more than \$3 million. So not only did

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1 the bank and brokerage records show that the
2 40 million-dollar figure was a lie, but the defendant's own
3 statements confirmed that the fund never had \$40 million.

4 Let's talk about another misrepresentation. The
5 defendant said in the PPM --

6 (Pause in proceedings.)

7 MS. SMITH: So I'm going to back up to the
8 defendant's next misrepresentation which we were talking
9 about. The defendant represented in the PPM, as you guys
10 now know is the private placement memorandum or the document
11 that investors get to review before they invest in the fund.

12 THE COURT: Excuse me. I'm very sorry about the
13 difficult issues we're having. This is unacceptable. Let's
14 just get the regular microphone.

15 MS. SMITH: Okay.

16 THE COURT: I'm sorry.

17 (Pause in proceedings.)

18 THE COURT: All right, I'm sorry.

19 MS. SMITH: I'll give it another try. Is that
20 helpful?

21 THE COURT: I think we can hear.

22 MS. SMITH: All right. So back to where we were,
23 which was the defendant's next misrepresentation. Again, it
24 was from the private placement memorandum, or PPM, which was
25 the document that investors looked at before they invested

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1 in the fund. And it represented that MSMB Capital had
2 Rothstein Kass as an auditor, and that was
3 Government Exhibit 5 was Ms. Hassan's PPM. And you heard a
4 lot of testimony that an auditor is a third party that would
5 use the financials and check to make sure that they are
6 accurate. And the defendant represented that this
7 particular firm Rothstein Kass was going to be serving as
8 the auditor for MSMB Capital. And you can see that there on
9 Page 5 and 27 of the PPM. And the representation that
10 Rothstein Kass was serving ing as the auditor was also a
11 lie. The defendant admitted that Rothstein Kass did not
12 audit MSMB Capital. And again this is one of the statements
13 that Agent Braconi read during his testimony. He was asked
14 directly in Government Exhibit 918, Did Rothstein Kass ever
15 do any work for MSMB Capital Management LP, and he answered
16 no.

17 And there's also actually a stipulation in
18 evidence which is just an agreement between the parties on a
19 particular fact, which is Government Exhibit 809, and it
20 states that hereby stipulated and agreed between the
21 undersigned parties that between 2007 and 2014 Rothstein
22 Kass did not do any work for MSMB Capital and that it also
23 did not do any work for MSMB Healthcare.

24 So the representation that the fund had an auditor
25 and that that auditor was Rothstein Kass was also a lie.

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1 The defendant represented to Ms. Hassan that he
2 had a strong track record in MSMB Capital. That is, that
3 the fund itself in the time it had been in existence since
4 2009, that it had been successful. And you can see the
5 testimony here from transcript Page 922. Did Mr. Shkreli
6 speak to you at all about his own background in the finance
7 industry? And Ms. Hassan said that he told her that he
8 referenced his own track record with MSMB Capital as being
9 quite strong.

10 And you can see here that the idea that
11 MSMB Capital had a strong track record was a lie. We know
12 that the initial investments by Mr. Richardson and
13 Mr. Rosenwald were made in October of 2009 and we can see
14 that in the summary of the bank and brokerage records, by
15 October of 2009 there's about \$300,000 in a bank account and
16 there were some additional investments but the pattern for
17 MSMB Capital is that the defendant would get investments and
18 then the fund would not perform and then he would go out and
19 get more investments. And you can kind of see that the fund
20 never really above \$600,000 and that there are multiple dips
21 in terms of the performance and that the fund only gets more
22 money when the defendant recruits new investors.

23 And so I think that you can see that most strongly
24 in November of 2010 when there's only \$330 in the bank
25 account and that again is when the defendant is making this

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1 misrepresentation to Ms. Hassan. Clearly the fund which had
2 a lot of money invested already had not performed well at
3 the time that he told her that it had.

4 And again, this is Government Exhibit 520 which is
5 the summary chart for the bank and brokerage records for
6 MSMB Capital.

7 And then the other misrepresentation I want to
8 talk about is that the defendant represented after
9 Ms. Hassan invested that her investment was actually
10 performing well. And her performance updates, which you've
11 seen for all of the investors, are Government Exhibit 80-1
12 through 80-9. And they all show positive returns as a
13 whole. And so this is a Government Exhibit 80-1 which is
14 the statement from February 2011. And this is a significant
15 statement because, as we discussed, in February of 2011
16 there was the Orex trade and the defendant lost all of the
17 money that was left in the fund. And so this is the
18 statement that was sent to her for the month of
19 February 2011 showing how the fund had performed in February
20 of 2011. And if you look -- sorry -- if you look, the
21 performance statement says that the fund performed
22 4.2 percent better in February 2011 than it had performed
23 the month before. And it also said that Ms. Hassan's
24 investment, which was originally \$300,000 was now \$324,000.

25 And we know obviously that this was a lie as well.

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1 And I think that the performance reports are, in fact, some
2 of the most significant lies in the case, especially for
3 MSMB Capital, because we know that in February of 2011 in
4 that Orex trade that Mr. Stich testified about on
5 February 1st, the defendant lost all of the money that was
6 left in the fund and he also put himself in a situation
7 where he was in debt by the amount of \$7 million to Merrill
8 Lynch. So as of February 1st, 2011, there's no money left
9 in MSMB Capital. There's no further trading after that
10 date, and the defendant and MSMB Capital are in debt by
11 \$7 million. So the performance updates that said that the
12 funds are performing are all lies.

13 And this again is Government Exhibit 520 at the
14 top and the testimony from Steven Stich which is at
15 Page 1522 of the transcript.

16 The defendant also misrepresented to Ms. Hassan
17 that MSMB Capital would be a hedge fund that would have a
18 mix of long and short positions, and we saw this in the PPM
19 as well. And you can see that the -- this was a lie. And
20 we know that because the defendant stopped trading
21 altogether. So he stopped treating MSMB Capital as a hedge
22 fund and buying and selling stocks for MSMB Capital as of
23 February 2011 because there was nothing left in the fund.

24 And this is Government Exhibit 502, and you can
25 see that -- from the brokerage account records not only was

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1 there no trading after February 1st, 2011, but the brokerage
2 account was actually shut down in July of 2011. So after
3 that point there's not even a brokerage account to buy and
4 sell stock in for MSMB Capital.

5 And again the performance report, if we see as of
6 June 2012, Ms. Hassan was told that her original
7 300,000-dollar investment was worth \$435,000 approximately.

8 And that's Government Exhibit 80-19 which is the
9 June 2012 performance report. And that's -- was sent on
10 September 9th, 2012. So the defendant sent out the
11 performance report for June 2012 on September 9th, 2012, and
12 you can see the 435,000-dollar figure.

13 And September 9th, 2012, September 10th, 2012, are
14 really significant because those are also the dates of the
15 wind-down e-mail that we talked about where the defendant
16 said I'm going to wind-down the fund. And so on that same
17 date he is sending out performance reports for prior months
18 and the performance reports here, the information in it is
19 all a lie.

20 And we know that again from the bank and brokerage
21 records.

22 But we also know that the defendant, you know,
23 when he September sent out those performance statements and
24 then he sent out the wind-down e-mail that he was doubling
25 down on those lies because not only did the performance

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1 update say that the investors, like Ms. Hassan, had made
2 money but he said that they would be able to redeem that
3 money or take their money out to the fund either in cash or
4 in stock or some combination thereof. And this is
5 Government Exhibit 103-13 which is the wind-down e-mail.

6 As you've seen most of the investors received this
7 e-mail and so it has a bunch of different Government Exhibit
8 numbers, but the content of the e-mail was the same and this
9 is kind of a key section in terms of redemption is that a
10 few operational notes, investors will have their limited
11 partnership interest redeemed by the fund for cash.
12 Alternatively, investors may ask for a redemption of
13 Retrophin shares or a combination of Retrophin shares and
14 cash. Keep in mind Retrophin shares are a liquid and no
15 liquid market may develop.

16 And then again misrepresentation sent the same day
17 as the performance report was also a lie because there was
18 no money in the fund at the time and there was no cash to
19 provide Ms. Hassan, and as you will see when we get a little
20 bit farther into this section, there was actually no
21 investment by MSMB Capital into Retrophin. So not only is
22 there no cash, but there's no stock as of September 2012
23 that could be provided to Ms. Hassan. So she's told that
24 her investment has gone, which is a lie, and she's also told
25 that she can take it out in cash or stock, which is a lie.

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1 The next investor in MSMB Capital that I want to
2 talk about is Darren Blanton. And again, just to give you a
3 kind of overview of who he was, he's from Texas and he runs
4 an investment company for Colt Ventures. He met the
5 defendant in June of 2010 in New York for a fund pitch, they
6 had a lunch with Tillman Ward, which is one of the people
7 who worked with Mr. Stich. He invested \$1 million in
8 December of 2010 and then he invested an additional \$250,000
9 in January of 2011. And if you remember, he sought a
10 redemption of his funds in November of 2011. And then he
11 reported the defendant to the SEC when he was unable to
12 actually redeem the investment. So that's just an overview
13 of Mr. Blanton.

14 So let's walk through the lies that the defendant
15 told Mr. Blanton starting again with the lies that he told
16 him in order to get him to invest in o the fund in the first
17 place.

18 He said that MSMB Capital had an AUM, or access
19 under management, of \$35 million and that Rothstein Kass was
20 the auditor and NAV Consulting was the administrator. And
21 then all of this information was information that Darren
22 Blanton asked for on December 2, 2010, a couple of days
23 before he made his investment and he sent an e-mail with
24 kind of the most important things that he wanted to know
25 from the defendant to confirm before he put that million

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1 dollars into the fund. And you can see that e-mail here is
2 Government Exhibit 105-3 and he says, Darren Blanton said,
3 Martin, who is your auditor and administrator, what are the
4 current AUM's? Sorry, you sent it, I'm operating on a
5 Blackberry tonight. And the defendant writes back, Auditor
6 Rothstein Kass; administrator NAV Consulting; lawyer
7 McCormick and O'Brien and he says AUM 35M. And Darren
8 Blanton testified that his understanding was that that meant
9 \$35 million. And we know that an AUM of \$35 million was a
10 lie. And again, if you look at Government Exhibit 520, the
11 summary chart for MSMB Capital and the defendant's statement
12 to the SEC, we know that in November 2010, on November 30th
13 just three days before the defendant sent that e-mail,
14 there's only \$330 in the bank and brokerage accounts for
15 MSMB Capital. And again, we know the defendant said that at
16 no point did the fund have more than \$3 million. So
17 \$35 million was way, way off and was clearly a lie designed
18 to induce Mr. Blanton to actually put that million dollars
19 into the fund.

20 Rothstein Kass, as MSMB Capital's auditor, was
21 also a lie and we kind of walked through that evidence, both
22 the defendant admitting it and the parties have stipulated
23 that Rothstein Kass never did any work for MSMB Capital.

24 NAV Consulting as the administrator for
25 MSMB Capital was a lie. Again, the defendant in

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1 Government Exhibit 918 told the SEC that NAV Capital --
2 NAV Consulting, excuse me, never did any work for
3 MSMB Capital. And there's also a stipulation to that
4 effect.

5 We did hear from a NAV Consulting witness during
6 the trial NAV Consulting did work for MSMB Healthcare. But
7 they weren't engaged until after the Orex trade and they
8 never did any work for MSMB Capital. So the representation
9 that MSMB Capital had an administrator was a lie and the
10 representation that the administrator was NAV Consulting is
11 also a lie.

12 Mr. Blanton was also told by the defendant after
13 he made his investment that the fund continues to perform
14 and the investor statements from Mr. Blanton are
15 Government Exhibits 79-1 to 79-3. And again, I'm just going
16 to highlight 79-2 which is the statement from March of 2011.
17 And you can see at the bottom there the defendant had listed
18 out what he claims are the account values for Mr. Blanton
19 starting in December of 2010 and going through to March
20 of 2011. And again, remember that on February 1st, 2011,
21 any money that was in the fund was lost, so this statement
22 that the defendant's -- excuse me -- that Mr. Blanton's
23 investment has increased and that it is more than the
24 \$1.25 million that he put in is a lie because actually there
25 was no money at this point in the bank and brokerage

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1 accounts.

2 (Continued on next page.)

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1 MS. SMITH: And, again, this is the backup evidence
2 for the bank and brokerage accounts and Mr. Stitch's
3 testimony that not only did the defendant have no money left
4 in those accounts, but he owed \$7 million to Merrill Lynch.

5 The next misrepresentation I want to talk about is
6 the representation in the private placement memorandum that
7 there were no lockups and that redemptions were available on
8 certain dates, so that basically an investor when you put your
9 money in, if you gave the defendant notice, he would give you
10 your money back in 30 days.

11 And that was in Government Exhibit 105-1 on the
12 first page, which was an email that the defendant sent to
13 Mr. Blanton when he was actually providing the information for
14 the fund. He said, Here's all of our fund documentation, the
15 fund is a 120 fee structure with no lockups. My philosophy is
16 if somebody doesn't to be a partner any more, no problem, 30
17 days' notice.

18 He is basically saying, you know, once you're in the
19 fund, if you change your mind, you want to your money out, if
20 you want to get out your investment plus whatever you earned,
21 just give notice and I'll get it back to you in 30 days.

22 And, again, that was also in a PowerPoint that
23 attached to that email, which, again, is Government
24 Exhibit 105-1.

25 And that representation, as we well know from

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1 Mr. Blanton was a lie. Because Mr. Blanton requested a return
2 of his investment on November 17th, 2011. And as you heard
3 him testify, he had become concerned about the fund over the
4 summer of 2011. He was concerned because he had some
5 information that maybe the fund didn't have an auditor and he
6 wasn't getting performance updates on time, and so he decided
7 he wanted to pull his money out. So he put in a redemption
8 request and he asked for the return of the \$1.25 million that
9 he put in, plus the money that the defendant said he had
10 earned while that investment was active.

11 And we know that the representation that the
12 defendant could get his money out in 30 days was a lie,
13 because once Mr. Blanton put in that request on November 17th,
14 2011, 30 days passed and he didn't get his money back, and
15 another 30 days passed and he didn't get his money back, and
16 he didn't get any money back until February of 2012.

17 At this point he got \$200,000, and if you remember
18 that was in two payments of \$100,000. And the site is in the
19 government exhibit there, it's Government Exhibit 503-C.

20 I want to just pause here for a minute, because if
21 you remember when Ms. Spaulding testified, she was talking
22 about the different bank accounts. And the bank accounts for
23 Capital are Government Exhibits 501 and 502. And as we've
24 seen now multiple times, there was no money in those accounts
25 after July of 2011, and after February of 2011, there was just

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1 a very, very tiny amount left.

2 And so how does Mr. Blanton get \$200,000 back in
3 February of 2012 from MSMB Capital. And the answer is that
4 the money doesn't come from MSMB Capital. The \$200,000 he got
5 back came from an account for MSMB Healthcare, and that is
6 Government Exhibit 503-C. It was an MSMB Healthcare account.

7 And if you remember at the end of Ms. Spaulding's
8 testimony, we actually traced where that \$200,000 came from in
9 the MSMB Healthcare account. And there had been an investment
10 in MSMB Healthcare, a different account by an investor, an
11 850,000-dollar investment, which got transferred to a
12 Retrophin bank account, and then that \$200,000 of that money
13 got transferred from the Retrophin bank account to a different
14 MSMB Healthcare account, and then out to Mr. Blanton at Colt
15 Ventures.

16 So the \$200,000 that Mr. Blanton got back as a
17 partial redemption in February of 2012 did not come from MSMB
18 Capital. It wasn't actually a redemption of his funds, it was
19 money that came from an MSMB Healthcare investor that was
20 taken from a Retrophin bank account and back to a different
21 MSMB Healthcare account, and then to Mr. Blanton.

22 So that's really important to keep in mind as well.
23 The defendant is lying not only about the ability to get a
24 redemption, but when there is a redemption about where that
25 money is coming from. And Mr. Blanton thought there was money

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1 left in MSMB Capital, because he did get \$200,000, but, in
2 fact, that money had come from an MSMB Healthcare investor.
3 And so that's how in February of 2012 he's actually getting
4 money out of MSMB Capital, because it's not actually coming
5 from MSMB Capital.

6 And after this point, after Mr. Blanton gets that
7 \$200,000, the defendant told him two more lies about his MSMB
8 Capital investment.

9 So first, the defendant told Blanton that MSMB
10 Capital had invested in Retrophin and that most of the value
11 of MSMB Capital was in Retrophin. And that's Government
12 Exhibit 105-12, and that's an email that the defendant sent at
13 the end of April of 2012.

14 And you can see in the last line in the second
15 voided paragraph, the defendant says, A good part of the value
16 of the MSMB funds is in Retrophin.

17 And we know that the statement that MSMB Capital
18 invested in Retrophin was a lie. Because from the bank and
19 brokerage records, we know that no money was transferred from
20 MSMB Capital to Retrophin, and we also heard that from the
21 testimony of Wendy Spaulding as she was going through the bank
22 accounts.

23 And this makes sense because all of the money in
24 MSMB Capital was lost on February 1st, 2011. There was
25 nothing left to move over. And Retrophin was founded, as we

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1 see later, later in February 2011. So the two entities didn't
2 even exist at the same time, and there was no money by the
3 time Retrophin was in existence for MSMB Capital to invest in
4 Retrophin. So the statement that that's where the fund's
5 money went into Retrophin was also a lie.

6 And then finally, the defendant told Mr. Blanton in
7 that letter, that's Government Exhibit 105-13, in June of
8 2012, that he had suspended withdrawals from MSMB Capital for
9 all investors.

10 So if you remember, Mr. Blanton testified that he
11 put in that redemption request, he got the \$200,000 back, and
12 then he kept kind of going back to the defendant saying, When
13 can I get the rest of my money? When can I get the rest of my
14 money? He was calling, and the people who worked for him were
15 calling, and so he gets this letter in June of 2012 where the
16 defendant says, Oh, you know, for MSMB Capital, I'm suspending
17 all withdrawals from the fund for all purposes. And he gets
18 this, you know, very official looking letter that says this.

19 But in fact, the idea that the defendant had
20 suspended redemptions from the fund was also a lie. First of
21 all, of course, there was no money in the fund so there were
22 month redemptions to suspend.

23 But significantly, Mr. Blanton is the only MSMB
24 Capital investor that gets a letter. Other MSMB Capital
25 investors were not told that the redemptions were suspended.

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1 And we have testimony to that effect from Sara Hassan,
2 Schuyler Marshall, Steven Richardson, John Neill and Lindsay
3 Rosenwald. And this makes sense, because Mr. Blanton was the
4 only one asking for his money back. And so the explanation
5 that was given to Mr. Blanton was that redemptions had been
6 suspended for the entire fund. But, in fact, he was the only
7 one that was told that because he was the only one that was
8 asking. And so that statement that redemptions had been
9 suspended was also a lie.

10 I also want to talk a little bit about Steven
11 Richardson, who was both an investor in MSMB Capital and a
12 member of Retrophin's board. If you remember, he is
13 originally from the UK, and he worked for American Express in
14 the Boston Consulting Group. He met the defendant in New York
15 in 2009. And he invested \$200,000 in MSMB Capital in October
16 of 2009. And then another \$200,000 in MSMB Capital in
17 February of 2010.

18 And you can kind of see that in the bank and
19 brokerage records. Again, as you look at the different
20 investments, you will notice that the fund never really
21 performs particularly well, but there's always an uptake in
22 money and funds being invested.

23 And so the first misrepresentation I want to talk
24 about in Retrophin is the representation in his private
25 placement memorandum, and they do differ for the MSMB Capital

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1 investors. Everyone didn't get the same version of the PPM.
2 You can see they have different dates on the front and there's
3 slightly different information inside.

4 And so Steven Richardson is one of the first
5 investors in the fund, and his private placement memorandum
6 says that MSMB Capital had a company called Fulvio &
7 Associates as an auditor, and a law firm called Cobb &
8 Associates as the attorney. And his private placement
9 memorandum has that information on page 5 and 27.

10 And, again, these statements that Fulvio and Cobb
11 were the auditor and the attorney were also lies. Government
12 Exhibits 803 and 807, which are stipulations, show that
13 neither Fulvio nor Cobb ever did any work for MSMB Capital.

14 The next misrepresentation I want to talk about was
15 a misrepresentation that the defendant made at the dinner with
16 Mr. Richardson and Mr. Biestek where the defendant was talking
17 about his funds and kind of pitching Mr. Richardson on the
18 investment. And Mr. Richardson said that they didn't talk
19 about the performance of the fund at that dinner too much,
20 other than the kind of performance he was used to delivering
21 for investors, which was 30 to 40 percent sustained range. So
22 basically that if you put your money into our fund that the
23 defendant managed, he generally got you 30 or 40 percent
24 return.

25 And you can see from the other testimony that we had

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1 from both Josiah Austin and also Lee Yaffe, that this
2 representation about this track record that the most the
3 defendant had done, prior to MSMB Capital and had gotten 30 to
4 40 percent returns was also a lie.

5 The hedge fund that the defendant ran directly
6 before he ran MSMB Capital, which was Elea Capital, resulted
7 in a loss of all the investors' money and a judgment against
8 him by Lehman Brothers. And we heard that testimony from
9 Josiah Austin and Lee Yaffe. You remember Josiah Austin said,
10 I put \$4.8 million into Elea Capital. And the defendant also
11 lost all the money in Elea Capital in a single trade, and as a
12 result of that trade, was also in debt to Lehman Brothers of
13 approximately \$2 million. So the statement that he was -- had
14 a good track record and often got investors 30 to 40 percent
15 returns was clearly a lie.

16 The defendant, when he was speaking to investors,
17 did not disclose what had happened with the Elea Capital. Did
18 not talk about the fact that he ignored the fund, lost
19 people's money, or that he had a judgment that he owed to
20 Lehman Brothers.

21 There were certain versions of the private placement
22 memo that mentioned Elea Capital, not all of them, some of
23 them said that one of the things the defendant had done in the
24 past was work at Elea. But to the extent that anyone actually
25 asked him about the Elea Capital funds, he lied about that as

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1 well.

2 And if you remember you heard from Mr. Blanton, he
3 did mention a background check on the defendant and the Lehman
4 Brothers judgment showed up in that background check, and the
5 defendant said, Oh, that was a big misunderstanding and that's
6 money that Josiah Austin owes, it's not money that I owe.

7 And so to the extent that he even mentions Elea,
8 which for the most part he did not, he wasn't truthful to
9 investors about what had happened or that he had been
10 responsible for causing the fund to loss all of its money.

11 And then again Mr. Richardson, as with all of the
12 MSMB Capital investors, once the investment was in place, once
13 the money was in the fund, the defendant lied about the
14 performance of the fund.

15 And for Mr. Richardson, the performance updates are
16 Government Exhibits 77-1 through 77-26, and this is an
17 example, Government Exhibit 77-13, which is the statement from
18 the March of 2011. And, again, similar to Sara Hassan, he was
19 told in March of 2011 that his original 400,000-dollar
20 investment had grown to approximately \$500,000. And this is a
21 month after the OREX trade, and we know that there's nothing
22 left in the fund. So this performance update is clearly a
23 lie.

24 And you can just see, again, the total that he was
25 told his investment was now worth, a little bit more than

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1 \$500,000 and that the return was 42 percent, which is in line
2 with what he lied about when he tried to get Mr. Richardson to
3 put his money in the fund.

4 So, again, we're seeing a lie to get the money in.
5 I always made 30 to 40 percent returns. And then once the
6 money is in and the money is gone, which Mr. Richardson
7 doesn't know, you get the same sort of lie, Oh, the fund is
8 doing great, you got 42 percent returns.

9 And, again this is just the same information from
10 the brokerage records with Mr. Switch about after the
11 February 1st, 2011 nothing left in the fund.

12 And then you also heard from additional MSMB Capital
13 investors, Lindsay Rosenwald who invested \$100,000 in the fund
14 in October of 2009; Schuyler Marshall, who invested \$200,000
15 in the fund in January of 2011; and John Neill. John Neill
16 invested \$500,000 in MSMB Capital on January 31st, 2011, the
17 day before the OREX trade.

18 And so, you know, I always keep John Neill in mind,
19 because John Neill wired his money in on January 31st, and the
20 next day the money was all gone. And so anything that the
21 defendant said about the performance of MSMB Capital the day
22 after John Neill invested, was clearly a lie.

23 So let's just look at some additional
24 misrepresentations that were told to these three investors in
25 order to get them to put the money in the fund. The defendant

1 falsely represented to Mr. Rosenwald that Fulvio was MSMB
2 Capital's auditors. And he falsely represented to Marshall
3 that Rothstein Kass was MSMB Capital's auditors.

4 So, again, you've heard this a couple of times, but
5 the fund didn't have an auditor, and Rothstein Kass wasn't the
6 auditor.

7 The defendant falsely represented to Rosenwald,
8 Marshall, and Neill that he had a positive track record. And
9 he falsely represented to Marshall and Neill that MSMB Capital
10 had a good track record in 2009 and 2010. And, again for
11 Marshall and Neill, he's talking to them in December of 2010,
12 when the bank account had -- bank and brokerage account had
13 \$330 in it.

14 The other misrepresentation I want to talk about is
15 the management fee would be 1 percent, and the incentive fee
16 would be 20 percent for the fund. A bunch of the investors
17 talked about it and they saw it in the materials kind of this
18 120 fee structure. And it basically meant that the manager of
19 the fund was going to take 1 percent of all the money that was
20 put into the fund, and that 1 percent would cover the costs
21 and the expenses related to the fund and salaries. And then
22 the manager would also get 20 percent of any profits.

23 So if the fund made money, you know, let's say you
24 put \$100 and you wind up with \$200, you know, the manager gets
25 to take 20 percent, or \$20 of that additional \$100 that they

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1 made. And that's the way that hedge fund managers get paid
2 basically.

3 And for MSMB Capital, between all of the investors,
4 there was approximately \$3 million invested in the fund, which
5 would have meant that the management fee earned 1 percent or
6 \$30,000. And there were no profits, as we know, so there was
7 no 20 percent incentive fee.

8 And you can see from the bank records that the
9 defendant withdraw from the fund far in excess of 1 percent
10 fee just in salaries for its employees alone, and these were
11 some of the payments that went out of the fund to Marek
12 Biestek, to Caroline Stewart, to Andre Logan, and the
13 defendant himself took \$26,000 out of the fund personally.
14 You can see the management fee -- the total management fee of
15 \$30,000, that the money he withdrew himself was close to in
16 excess of that 1 percent.

17 And then again the defendant falsely represented to
18 these three additional investors that the fund had performed
19 well in the performance reports.

20 And this is just a little overview for Rosenwald.
21 He was told in June of 2012 that the fund was up -- or his
22 investment in the fund was up 79 percent. Neill was told that
23 his investment was up 29 percent. And Marshall was told that
24 his investment was up 41 percent. And, again, John Neill, his
25 investment was one day prior to the OREX trade.

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1 So all of the information he got in all the
2 performance reports he received was false, because the day
3 after he put his money in, all of the money was gone. And
4 that's Government Exhibit 502-B and you can see the wire in,
5 and the date, which is January 31st, 2011.

6 And then this is the chart that Special
7 Agent Braconi walked through in his testimony this week. The
8 blue columns are what he calculated the investment performance
9 report said about the performance of the funds. And the red
10 is what was actually in the bank and brokerage accounts. So
11 that you can see in each month, February 2011, March 2011, and
12 then so on, that the blue is what the defendant is basically
13 telling people is in the fund. This is what the fund is
14 worth. And then the red there is what is actually in the bank
15 and brokerage accounts. And that's Government Exhibit 704.

16 The next thing I want to talk about is materiality.
17 And one of the things that we could show is that the lies that
18 the defendant told were material. And that basically just
19 means a material fact is one that would have been significant
20 to a reasonable investor's investment decision. So if you
21 were a reasonable person in an investment hedge fund, what are
22 the facts that would be important to your decision to invest.
23 And we expect that Judge Matsumoto will also tell you that
24 once you find that there was a material misrepresentation or
25 omission, it does not matter whether the intended victims were

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1 gullible buyers or sophisticated investors.

2 And so, you know, one of the reasons we look at
3 materiality is just to see whether or not these lies are
4 things that actually would have caused people to invest in the
5 fund. And I think -- both invest in the fund, and then as
6 well, you know, whether or not they would have pulled their
7 money out of the fund but for the misrepresentation.

8 The evidence that we've just seen about all of the
9 lies about the performance, about the defendant's track
10 record, about the AUM are clearly material to a reasonable
11 investor. You think about who that reasonable investor is,
12 they want to know is a third party looking at the financials.
13 They want to know how the fund has performed ahead of time.
14 They want to know whether or not the fund is performing now
15 after getting accurate performance updates.

16 And so that is the standard, the reasonable investor
17 standard that you should use to evaluate all of those lies you
18 just heard. I'm also going to walk through what the investors
19 themselves said here about why these things were important so
20 you can see that these lies were, in fact, material
21 misrepresentations.

22 So you heard from Rosenwald, for example, about the
23 auditor, administrator, attorney and why those are important.
24 And he said they were important because you're giving people
25 money and you're expecting audited returns. That's standard

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1 in the industry. And so the idea is when they're getting
2 performance updates, it's not someone making up numbers,
3 there's a third party and they're checking everything and that
4 you know the information you're getting is accurate. And
5 that's why an auditor is important to a fund. And he also
6 said that if MSMB Capital did not have an auditor, he likely
7 would not have made the investment.

8 And as you can see, a number of the other investors
9 who testified also said that auditors, administrators, and
10 legal counsel were important to them. And these were some of
11 the issues that the defendant told lies about in order to get
12 people to invest in the fund.

13 And, again, keep in mind that the defendant had
14 experience in the industry. He had run a prior hedge fund.
15 He had been on Wall Street at this point, even though he was
16 young, for about ten years. And so he knew that these are the
17 kind of things that a reasonable investor expects to see when
18 they're going to put their money in. Is there an auditor? Is
19 there somebody keeping an eye out on the financials? And that
20 these were important things to the people that were investing,
21 and that was the reason why he told these lies.

22 In terms of materiality for the assets under
23 management, Sara Hassan explained why you would want to know
24 what the assets under management were for a certain fund. And
25 she said that that was a very healthy fund size, and it had

1 phenomenal returns. And she talked about how if the hedge
2 fund was too small, you have a hard time getting any momentum
3 and to make any significant investments and to get solid
4 returns. And so that's why she was looking for an AUM of a
5 certain size. She wanted to know if the hedge fund could
6 survive and perform.

7 And you also heard testimony from Darren Blanton
8 about the AUM being important. And he talked about how it was
9 important because if you had enough assets under management,
10 that meant that other people had invested in the fund, and
11 that it can operate and move forward and not worry about not
12 having enough money to continue.

13 In terms of the track record, you also heard from
14 Sara Hassan why is it important, and she said it's very
15 important that someone's track record be good, it's common in
16 the hedge fund world, you make investments in someone's
17 current fund based on their track record in old funds. So if
18 there was an old fund that she could have used to make a
19 determination, that would have been very helpful. And then
20 she said it's very important in understanding about a
21 manager's track record.

22 So, you know, what the defendant said about his
23 prior history, his ability to get returns, whether he had been
24 successful was really important to these investors to get them
25 to put their money into the fund. And you also heard that

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1 from Richardson, you heard that Mr. Marshall, and you heard
2 that from John Neill.

3 In terms of liquidity and redemptions, this is the
4 ability to get your money out if you want to within the 30-day
5 period.

6 Darren Blanton testified that that was important, if
7 there was something wrong in the market, or if you need your
8 money, that when the fund says you can get it out in 30 days,
9 you can actually get it out in 30 days.

10 And then again a bunch of the other investors who
11 testified, Sara Hassan, Ms. Rosenwald, Mr. Richardson, all
12 said that the ability to redeem or the ability to get their
13 money out when they wanted was important to their decision to
14 invest.

15 Marshall in particular said that it was a positive
16 factor for MSMB Capital, and that it was something he always
17 looked for when he was looking for the PPM of the fund.

18 And then again the performance reports. So these
19 are the reports that tell you how your investment is doing
20 when your money is actually in there.

21 And Sara Hassan testified that she thought that the
22 fund was getting phenomenal returns based on the investor
23 statement that the defendant was sending out. And she said,
24 as did all the investors, that the source of her information
25 about how MSMB Capital was doing was the defendant and what

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1 were those performance reports.

2 And she was asked, Throughout 2011, did you consider
3 redeeming or withdrawing your money from MSMB Capital? And
4 she said, No, I did not. And when she was asked Why? And she
5 said, Because they were pretty phenomenal returns. And the
6 idea being you put your money in this fund, and it's
7 performing really well, why would you take your money out, why
8 wouldn't you just leave it in there and let it continue to
9 grow.

10 And then the additional investors as well, every
11 investor that you heard from, said that the performance
12 reports were very important to their decision to leave their
13 money in the fund, because that was how they knew kind of how
14 their money was doing and whether the fund was doing well.

15 Both Marshall, and Neill, and Richardson said that
16 they didn't make redemption requests like Ms. Hassan, because
17 they felt that the fund was doing well and there was no reason
18 to take their money out.

19 Mr. Blanton, obviously, was in a different category,
20 because he did request a redemption. But he also said before
21 he requested his redemption, if you remember he had a
22 conversation with the defendant about the OREX trade and that
23 the defendant was kind of concerned that the fund may not have
24 done well. And then he gets a performance report the next
25 month that says the fund is up 4 percent. So he relied on

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1 that performance report for the understanding that, you know,
2 the fund had done fine after the OREX trade, even though he
3 eventually did put in a redemption request, and up until that
4 point, he was still relying on the performance reports.

5 And the last thing I want to focus on in a big way
6 is evidence of the defendant's intent. So, you know, one of
7 the things we need to show is that the defendant acted -- that
8 these weren't just kind of mistakes, that these were
9 intentional lies, that these were lies that were told with the
10 intent to have something happen and it is the government's
11 position that the intent was on the front end to get these
12 investors to actually put their money into the fund, and then
13 once the money was in the fund, the lies were done
14 intentionally to make sure that people didn't take their money
15 out of the fund.

16 And I think that one of the best examples of this is
17 the trip that the defendant took to Texas in December of 2010.
18 So if you remember, I talked about this a number a lot, but in
19 November of 2010 at the end of the month, the bank and
20 brokerage accounts for MSMB Capital had \$330. So all of the
21 money that people like Richardson and Rosenwald had put into
22 the fund was already gone in November of 2010. There was
23 nothing theft. There was \$330.

24 And so the defendant, instead of telling Richardson
25 and Rosenwald that their money was gone, and instead kind of

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1 coming clean, he continued to send performance reports saying
2 that the fund was doing well. And then he needed to figure
3 out where to get more money from, and so he took a trip down
4 to Texas to recruit new investors.

5 And you've heard about his trip from Mr. Blanton,
6 and you can actually see in the bank records that on
7 December 6th, 2010, there are a bunch of credit card charges
8 in Texas. And we also saw that email with the defendant's
9 schedule of various investors that he was going to meet with
10 on that trip. And you can see the amount of money in the bank
11 account at the end of -- at the time he was down on that trip,
12 you know, less than a thousand dollar in the bank account at
13 that point. So he's down in Texas at the end of November.
14 There's \$330 in the bank and brokerage accounts. While he's
15 in Texas, there's less than a thousand dollars in the bank
16 account, and he is down there telling the same lies to get
17 more people to put money into the fund.

18 And, again, right before he makes the trip. So
19 after there's only \$330 in the bank and brokerage accounts, on
20 December 2nd, 2010, when he sends that email to Darren Blanton
21 with the lies about the auditors and the administrator and the
22 amount of money under management.

23 And you heard from both Blanton and Neill, they
24 talked about what the defendant said at those meetings in
25 Texas and what their understanding was of the fund after

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1 dinner. And that they were both told that the fund had good
2 track record, and that it had been performing well. And
3 Mr. Blanton said that the information he was told at dinner
4 was the information he had gotten all along in terms of the
5 size of the fund, and the auditor and the administrator.

6 So the defendant knowing the amount of money that
7 was left, knowing he had already lost Rosenwald's and
8 Richardson's money, goes down to Texas, tells the exact same
9 lies, with the purpose of getting more money to put into the
10 fund.

11 The other email I want to walk through is one that
12 Agent Braconi talked about during his testimony. It is from
13 March of 2011 which, again, is about a month after the OREX
14 trade, and the defendant sent an email to Edmond Sullivan and
15 he asked him to do a big favor and call this guy who's going
16 to give us 4 million but sounds like he's changing his mind.
17 And the guy's name on the email is Steve Harrison. And if you
18 go back and look at the defendant's itinerary for the Dallas
19 trip, Steve Harrison is one of the people he meets with in
20 Dallas.

21 So now we're in March, the defendant has lost all
22 the money in MSMB Capital, and he's asking Mr. Sullivan to
23 serve as reference for him, and he is basically saying, I want
24 him to mention the investment in MSMB Capital, don't say how
25 much you put in, and then say you got back 1.3 times that

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1 amount in a manner of months and there was no hassle in
2 redeeming. Talk about how long you've known me and the trust.
3 Please sing my praise. This is for us, and if you can help us
4 close the deal, I really appreciate it, if you can do it ASAP,
5 that would be with great.

6 He's basically asking Mr. Sullivan to call this guy
7 who might invest more money with him and tell him that the
8 defendant, you know, is great and he's trustworthy and gives
9 your money back if you want him to. And Mr. Sullivan responds
10 that he wants the defendant to send some background
11 information he has on the investment.

12 And then this is the top portion of that same email
13 chain. If you look at bottom, Mr. Sullivan is asking: Does
14 he know OREX drama, which is obviously the OREX trade. Is it
15 resolved officially with BAML? You heard from Mr. Stitch that
16 Bank of America and Merrill Lynch merged so BAML is a
17 reference to those two entities. Do you have last year's
18 audit available? Who is your legal? Lots of questions, we
19 just want to be prepared.

20 So Mr. Sullivan is asking the defendant, had you
21 told him about the fact that he lost all the money in the OREX
22 trade? Have you resolved the situation with Merrill Lynch?
23 And what can I tell him about the auditors?

24 And this is Mr. Shkreli's response, and I think it's
25 really significant. He says, This is from MSMB Capital. It's

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1 not aware of any drama, nor does it concern him as a manager
2 of the account. Our legal is McCormich & O'Brien. I would
3 stay away from legal and audit and accounting and talk about
4 her experience in LP or a limited partner investor, and how
5 you were treated with trust, transparency, and quick
6 turnaround of funding. Any questions on the other stuff, I
7 would say I trust him, and the mechanisms are in place and
8 this other stuff looks fine as I traded with the guy and
9 watched him trade, and was very happy with what was provided.

10 So that is in March of 2011. The defendant is
11 basically asking this person to serve as a reference and to
12 stay away from things like legal and audit and accounting, and
13 to talk only about trust. Because he wants this investor from
14 Texas to provide an additional \$4 million.

15 I also want to talk about Mr. Blanton a little bit
16 more. He was told that there were no redemptions for any MSMB
17 Capital investors in June of 2012. And he talked about he was
18 the only one that was provided that information, all the other
19 investors were told that they can redeem their investment for
20 stock and cash in the September 2012 wind down email.

21 Mr. Blanton did not receive the email. If you
22 remember his testimony, he had the wind down email because he
23 got it from somebody else in hard copy, he didn't get it as an
24 email. So the defendant knew that he had sent Mr. Blanton
25 this letter that said there were no more redemptions. And he

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1 knew that he didn't send anybody else that letter. So
2 Mr. Blanton is in one category, and all the other MSMB Capital
3 investors are in another. And when it comes time to send that
4 wind down email, he makes sure it goes to everybody else and
5 not Mr. Blanton, and Mr. Blanton is the only one that requests
6 the redemption.

7 Look at your deliberate, specific approach as to put
8 Mr. Blanton in one category and put everybody else in other
9 category and tell them that they can redeem in September of
10 2012. To remind you, Mr. Blanton's response, and he testified
11 about it when he got the wind down email, he was very confused
12 because he had been told that, you know, redemptions had been
13 suspended for everybody. And so that's the reason that the
14 defendant left him off that wind down email. And this is just
15 Government Exhibit 109-9, which is a version of the wind down
16 email where you can see all of the bcc's, all the email
17 addresses to which it was sent and Mr. Blanton is not on that
18 email.

19 And, again, another of these examples of the
20 defendant's intent was the use of funds in excess of the
21 management fees to cover salaries and payments to employees.
22 And this is Government Exhibit 212. This is actually an email
23 from April of 2012, long after MSMB Capital is defunct, but
24 he's discussing with Kevin Mulleady, who we'll talk about
25 later, in the context of an investment into MSMB Healthcare,

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1 and to potential investors into the fund asking, How are you
2 able to pay your team such a modest asset base? And that's
3 just saying, again, if you have a small amount of assets under
4 management, that management fee, the 1 percent you're allowed
5 to take out and spend on salaries and other expenses, is
6 really small. If you have a big fund, that 1 percent is much
7 bigger. And the defendant responds, Lots of ways. Many of us
8 had no salaries or low salaries. We have some expenses that
9 the fund pays for, and other deferences, we'll tell you more
10 when we meet.

11 So that's pretty good evidence that the defendant
12 knows that there are -- you know, if you have a larger asset
13 base, that you can pay more in salaries. And he knows that
14 people are going to wonder if you have a really small fund how
15 you are actually paying your staff. And if people knew that
16 the fund was only \$3 million, then they know you only have
17 \$30,000 to spend on expenses.

18 The defendant also concealed that he used MSMB
19 Capital fund for personal expenses. We heard testimony from
20 Mr. Yaffe. And he talked about his father's investment, the
21 George Yaffe investment in Elea Capital, and that George
22 Yaffe, prior to the consulting agreement, which we will get to
23 later, had received some small payments from the defendant.
24 He felt they totaled about \$5,000, kind of as a repayment over
25 the years that they were waiting to get their investment money

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1 back.

2 And there are direct payments to George Yaffe out of
3 the defendant -- out of the defendant's -- excuse me, out of
4 various accounts, and I believe actually that slide is wrong,
5 there are direct payments out of the MSMB Capital bank
6 account, which is Government Exhibit 501 to George Yaffe. And
7 when these direct expenses go out of that bank account,
8 they're classified as research expenses, when they are coming
9 out of the MSMB Capital bank account.

10 But the defendant also passes money from MSMB
11 Capital through his personal account and used that money to
12 send George Yaffe payments. And so that's actually Government
13 Exhibit 514E, which is the defendant's personal account.

14 And so I know that there was testimony on direct and
15 also on cross about this 5,000-dollar payment that George
16 Yaffe received during this period when he is waiting to get
17 his money back. And Lee Yaffe was asked on cross, Well,
18 didn't that money that your father got, that \$5,000, come from
19 the defendant's personal bank account? And the truth is, that
20 the money did come from the defendant's personal bank account
21 but it was transferred in from MSMB Capital. So the money
22 comes into the personal bank account from MSMB Capital, and
23 then it goes to George Yaffe.

24 And so the defendant knew that he shouldn't be
25 sending George Yaffe Elea Capital investor money from MSMB

1 Capital directly. So when he sends it from MSMB Capital
2 directly. He said it's a research expense. And when he
3 doesn't classify it that way, he uses money from MSMB Capital,
4 passes it through his personal account, and then sends it out
5 to George Yaffe. And you can see those transactions right
6 there. So the money comes in from MSMB Capital to the
7 defendant's personal account, and then it goes out from his
8 personal account to George Yaffe.

9 And this section is about what the defendant said
10 about his education. And this is really important for the
11 defendant's intent because it shows how the defendant
12 presented himself as a different person to different investors
13 who wanted to hear different things.

14 So the defendant was for each investor what the
15 defendant -- what the investor maybe wanted to hear or what
16 the defendant thought the investor wanted to hear in order to
17 get that investor to trust the defendant and to put their
18 money and keep their money with the defendant and in MSMB
19 Capital.

20 So in terms of the defendant's education, he told
21 Steven Richardson that he hadn't had the money to actually be
22 able to finish college, and you heard testimony from Steven
23 Richardson that he hadn't been able to finish college because
24 he didn't have enough money. And so that was the story about
25 the education that the defendant told Steven Richardson.

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1 When it came it Darren Blanton, who he was trying to
2 impress and get a million dollars out of, he told Darren
3 Blanton that he had graduated from Columbia, which is a
4 completely different story than I didn't have enough money to
5 graduate from college.

6 And then when he was talking to John Neill, when the
7 defendant emailed John Neill, if you'll remember there was an
8 anecdote about how John Neill had sent him a book on Steven
9 Jobs, the Apple founder, and he said, Oh, Steve Jobs dropped
10 out of college. And so what did the defendant tell John Neill
11 about his education? He says, Oh, I went to Columbia and I
12 dropped out, too. I'm just like Steve Jobs.

13 So you get three different stories here. One, I
14 didn't have money to finish college; two, I graduated from
15 Columbia; three, I dropped out of Columbia, just like Steve
16 Jobs. Depending on which investor the defendant is talking
17 to, he changes the story to fit what he thinks the investor
18 wants to hear in order to get the investor to trust him and to
19 keep their money with him.

20 And what's the truth about the defendant's
21 education? Well, there's a statement from the defendant,
22 Government Exhibit 903, that he graduated from Baruch College.
23 So that's not, I didn't have enough money, that's not I
24 dropped out of Columbia, that's not I graduated from Columbia.
25 He went to Baruch. And we also have testimony from that he

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1 did not, in fact, enroll at Columbia at any point, nor did he
2 graduate from Columbia.

3 And then the other, you know, evidence of the
4 defendant's intent was that there these books and records of
5 MSMB Capital that were provided to Mr. Blanton in the summer
6 of 2012. And this is the point at which, if you remember,
7 Mr. Blanton decided to go to the SEC, because the information
8 that's provided to Mr. Blanton is very clear who invested at
9 what point.

10 Mr. Blanton is shocked. He has no idea that he was
11 the largest investor in MSMB Capital. That the actual total
12 amount of money that was put into MSMB Capital was only about
13 \$3 million. And so, you know, the defendant knew that this
14 was the information that was actually correct about MSMB
15 Capital. He provided it to Darren Blanton in the summer of
16 2012 at the same time that, again, he's seeing these
17 performance updates to the other investors.

18 And just to recap, as of September of 2012, MSMB
19 Capital has no funds, it hasn't invested any money in
20 Retrophin, because Retrophin didn't exist when MSMB Capital
21 existed, and it didn't appear on the capitalization table of
22 Retrophin, and it hadn't received any shares of Retrophin, so
23 that's September of 2012.

24 On September 5th, 2012, there's a settlement of the
25 OREX trade between Merrill Lynch and MSMB Capital, the

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1 defendant and Mr. Biestek. And that's Government
2 Exhibit 113-7. And that's signed by the defendant, also MSMB
3 Capital and also by Marek Biestek.

4 And in that settlement agreement, there is a
5 statement of the assets of Mr. Shkreli, Mr. Biestek, and MSMB
6 Capital. And the reason there's a statement is because the
7 settlement is -- in connection with the settlement, they're
8 representing that they don't have more assets, and so they
9 pick the number to settle on, and this is the amount of money
10 that they actually have that could be used to pay it back.
11 And MSMB Capital is listed at the bottom there. And says it
12 has zero dollars in assets as of September 5th, 2012. And you
13 can see also that under Mr. Shkreli's name, there's the Lehman
14 judgment listed there as well.

15 So as of September 5th, 2012, the defendant says I
16 have 2 million in judgment against me, and MSMB Capital, it
17 has nothing. And keep in mind this the same time, four to
18 five days before the performance updates are sent out.

19 And at the same time as the performance updates, the
20 wind down email was sent out where people in MSMB Capital are
21 told that they can get their money out in cash or stock, four
22 days after he tells Merrill Lynch that there's no money in the
23 fund.

24 And there's a statement from the defendant, which is
25 Government Exhibit 935 to the SEC, where he was asked if

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1 everybody from MSMB Capital and Healthcare who wanted their
2 money out of the fund at the time he sent the wind down email,
3 would there have been enough cash available for all those
4 investors? And the defendant's answer was No.

5 And these are those performance reports that I was
6 talking about. So September 9th, 2012, the same time that he
7 sends that wind down email where he lies and says he'll send
8 out money out in cash, and that everybody's going to get a
9 redemption, these are the performance updates that he is
10 sending to MSMB Capital investors: 79 percent returns,
11 45 percent returns, 29 percent returns, 41 percent returns.

12 If you remember with Richardson, he had been
13 convinced by the defendant in June of 2012 that he was going
14 to move his MSMB Capital investment into Retrophin, which was
15 a fiction because there was no MSMB Capital investment at that
16 time. But that's why he didn't receive the performance update
17 in September of 2012.

18 And Blanton had been told there were no more
19 redemptions, so he wasn't getting a performance update in
20 2012. But the rest of the MSMB Capital investors at that time
21 where there's no money and the defendant is saying there's no
22 money and there's not enough cash, he's telling Merrill Lynch
23 there's zero dollars they're all getting those performance
24 updates with returns up to 79 percent.

25 (Continued on next page.)

Summation - Smith

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1 MS. SMITH: The other thing I want to talk about is
2 the SEC subpoena that the defendant received on October 1st,
3 2012. If you remember, the subpoena asked for information
4 about MSMB Capital and investments that had been made in it
5 and this is, you know, after the point at which Mr. Blanton
6 had reported the defendant to the SEC. This is October 1st,
7 2012 after the wind-down email, all those performance reports
8 after the Merrill Lynch settlement where MSMB Capital had said
9 it had zero dollars.

10 And the defendant responds to the SEC subpoena on
11 November 4th, 2012, and this response is significant. He puts
12 a schedule of funds managed by MSMB attached to that subpoena
13 reply. And on November 4th, 2012, two months after that
14 Merrill Lynch statement, he says that MSMB Capital has
15 \$2.6 million assets under management to the SEC. And part of
16 the explanation he gives is that the funds have been
17 successful because they've invested in Retrophin. We
18 obviously know that is a lie because MSMB Capital did not
19 invest in Retrophin.

20 And then he gives another explanation for the assets
21 under management and says he has a long-term advisory
22 relationship with Josiah Austin, a private investor. For many
23 years this advisory relationship represented the bulk of
24 MSMB's activities, conclusion of these efforts would also
25 affect the AUM calculation.

1 So he's basically saying, well, I was a personal
2 advisor, I managed money for Josiah Austin so I'm counting in
3 my AUM his assets. And we know from Josiah Austin's testimony
4 that that was a lie. He was not an investor in MSMB Capital,
5 other than investing in Elea Capital. He never invested any
6 other money with the defendant. After the defendant lost
7 \$4.8 million with him, he had very little contact with him
8 after 2008. And the defendant himself admitted that he had no
9 trading authority or no discretionary authority over any of
10 Mr. Austin's money. So again, this kind of explanation for
11 why in November 2012 all of a sudden the assets under
12 management are 2.6 million, when in September 2012 they were
13 zero, is a lie.

14 The last -- one of the last things I want to talk
15 about for MSMB Capital are the evidence of the conspiracy
16 between the defendant and Marek Biestek. Because two of the
17 three counts for MSMB Capital are charged as a conspiracy.
18 You see a lot of Marek Biestek in the defendant's actions with
19 respect to MSMB Capital. So MSMB, as you heard from a number
20 of people, is for short for Martin Shkreli Marek Biestek.

21 Mr. Biestek was involved in the setup of the MSMB
22 Capital bank and brokerage accounts and he had signatory
23 authority for the accounts, so he's the one who actually set
24 it up. In fact, the main bank account he was the only person
25 on it for a period time and he was also responsible for the

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1 brokerage account. You heard from Mr. Stich that he was there
2 at the meeting where they set up the account for Merrill Lynch
3 and that he was the one responsible for that setup. You can
4 see his name in both places. He was involved in pitches to
5 MSMB Capital investors, he's listed in the private placement
6 memo and in marketing materials as the portfolio manager for
7 the fund, and multiple witnesses testified to his presence in
8 the office and his work at the fund, including people like
9 Mr. Austin, Mr. Yaffe, and Mr. Stich, who were there at
10 various points, and from Mr. Richardson, Mr. Biestek was there
11 for the pitch and they had a lot of communication about the
12 fund over the years that they knew each other.

13 Mr. Biestek was present for and aware of the fallout
14 from the Orex trade. There is an email from the defendant to
15 Mr. Biestek that's as a result of the Orex trade and he's also
16 in the office at the same time, as you heard from Caroline
17 Stewart. And after the Orex trade he continues to work with
18 the defendant on MSMB Healthcare and on Retrophin. He has
19 interactions with MSMB investors such as Steve Richardson and
20 he doesn't say to anybody, oh, by the way, the defendant blew
21 up the fund, we owe, you know, \$7 million to Merrill Lynch and
22 all of their money is gone. He just continued to work with
23 the defendant on all of these different schemes.

24 In the wind-down email he's described as a
25 co-founder and partner of both funds. And, again, he was, as

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1 you saw, he signed the Merrill Lynch settlement agreement. So
2 he knew what they were representing were the assets of MSMB
3 Capital as zero dollars on September 5th, 2012.

4 The last requirement I just wanted to talk about --
5 or I think there are a couple more, but getting to the end of
6 MSMB Capital. Overt acts in the indictment. So I told you
7 for securities fraud conspiracy there is an additional legal
8 requirement that you show an overt act and that could be just
9 something like an email.

10 So here are two of the overt acts that are in the
11 indictment. One is on or about October 24th, 2009, Marek
12 Biestek sent an email to Steven Richardson copying Shkreli and
13 enclosing the MSMB Capital investor kit, which included a
14 presentation and a private placement memorandum, and that was
15 admitted as Government Exhibit 122-1. Again, these overt acts
16 are just acts that are taken in furtherance of the conspiracy.

17 And I have a second one here, which is the email
18 from December 2nd, 2010 that was sent by the defendant to
19 Darren Blanton that 35 AUM Rothstein Kass and NAV Consulting,
20 all lies. That's Government Exhibit 105-3.

21 The last two requirements are the wires and venue.
22 Venue just is a different standard. Most of the -- everything
23 else we need to prove beyond a reasonable doubt. Venue, the
24 standard is preponderance, which just means more likely than
25 not. And here there's a lot of evidence that acts in

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1 connection with MSMB Capital took place in the Eastern
2 District of New York.

3 So Mr. Blanton testified that he traveled through
4 LaGuardia Airport in Queens; Mr. Rosenwald, who was an MSMB
5 Capital investor lived in Lawrence, New York, which is in
6 Nassau County; the defendant lived in Brooklyn, and
7 Mr. Biestek lived in Queens during the operation of MSMB
8 Capital.

9 And then in terms of the interstate wires, we have
10 emails, we have phone calls, we have bank transfers.

11 So that is the end of the MSMB Capital scheme. The
12 first three charges, securities fraud conspiracy, wire fraud
13 conspiracy and securities fraud. And for all of the reasons
14 that I talked about and all of the evidence we just walked
15 through, we have proven beyond a reasonable doubt that the
16 defendant is guilty of those three crimes.

17 Your Honor, I don't know if you want to take a quick
18 break before I move on.

19 THE COURT: Yes, I think maybe it would be a good
20 time to stretch and give the jurors a little break. Please
21 don't talk about the case at this time and we will come and
22 retrieve you in about 10 minutes. Thank you.

23 (Jury exits courtroom.)

24 THE COURT: Let's take some time. Ten minutes is
25 that enough?

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1 MS. SMITH: Yes.

2 (Recess.)

3 (Jury enters courtroom.)

4 THE COURT: All jurors are present. Please have a
5 seat.

6 Please proceed.

7 MS. SMITH: So before the break we talked about the
8 MSMB Capital scheme and what you saw was devastating evidence
9 that the defendant is guilty of all three of the crimes for
10 which he is charged in connection with those schemes.

11 We're going to turn now to MSMB Healthcare, which
12 was the second hedge fund that the defendant ran. He started
13 MSMB Healthcare just days after MSMB Capital, and what you're
14 going to see are a similar pattern of misrepresentations to
15 investors in MSMB Healthcare. The same sort of
16 misrepresentations in order to get the investors to put their
17 money into the fund and the same sort of misrepresentations in
18 order to keep those investors invested in MSMB Healthcare.
19 And keep in mind, during MSMB Healthcare when we talk about
20 things like the defendant's track record and the track record
21 of the funds, you have MSMB Capital at this point which has
22 blown up and lost all of its money and MSMB Healthcare is the
23 next thing that the defendant moves to. So that context, the
24 MSMB Capital context should be in the back of your minds as
25 you're listening to the MSMB Healthcare evidence and when the

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1 defendant talks about his track record and his experience as
2 an investor for MSMB Healthcare now, not only do you have Elea
3 Capital which was a fund that did not perform and lost all of
4 its investors' assets in the 2007, 2008 period, now you also
5 have MSMB Capital, which has as of February 1st, 2011, ceased
6 to function. So that's kind of the background going into
7 Counts Four, Five and Six, which are part of the MSMB
8 Healthcare frauds.

9 The same three types of conspiracy -- the same three
10 types of charges, securities fraud conspiracy, wire fraud
11 conspiracy and securities fraud are charged in the MSMB
12 Healthcare scheme.

13 Again, just as an overview of the schemes. The same
14 sorts of misrepresentations to investors to get them to put
15 their money in and then to get them to keep their money in the
16 fund. Things like the liquidity of the fund, the existence of
17 the auditor, the defendant's track record and the
18 assets under management. And then for the misrepresentations
19 to get them to keep their money in the fund, the false
20 performance updates and then the false statements about the
21 composition of the fund.

22 And MSMB Healthcare is a little bit different
23 because unlike MSMB Capital, MSMB Healthcare did in fact
24 invest in Retrophin. And at some point in MSMB Healthcare, as
25 you will see, Retrophin was the only thing that MSMB

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1 Healthcare was invested in. And we'll get into this in more
2 detail, but the MSMB Healthcare investors also thought they
3 were investing in a hedge fund. And, again, remember a hedge
4 fund is supposed to be a collection of stocks and add
5 different kinds of equities and there is a mix, there's longs,
6 there's shorts. And so when we talk about the composition of
7 the fund for MSMB Healthcare, it's important because at the
8 end of the day MSMB Healthcare is basically only invested in
9 Retrophin. And so it's only composed of Retrophin not this
10 kind of mix that the investors were told about and which they
11 expected.

12 So for the second scheme, MSMB Healthcare, again,
13 the time period is February 2011, which is when MSMB
14 Healthcare starts after the Orex trade to September 2014 and,
15 again, we have the same three charges for this scheme as we
16 did for MSMB Capital.

17 And each of the crimes has the same elements that we
18 talked about earlier. The only difference is the overt acts
19 that are required for the securities fraud conspiracy -- and
20 we'll look at a couple of those at the end -- but those are
21 different for this scheme than they were for the MSMB Capital
22 scheme.

23 And, again, as with MSMB Capital, MSMB Healthcare,
24 when you buy an interest, when you invest in MSMB Healthcare,
25 you are investing in a security, which is why we have charged

Summation - Smith

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1 securities fraud and securities fraud conspiracy.

2 So let's talk about the creation of MSMB Healthcare.
3 It followed in the immediate aftermath of the failed Orex
4 trade and the loss of all the funds in the MSMB Capital. And
5 it was founded, as you can see the foundation documents, on
6 February 7th, 2011, so six days after the Orex trade. It was
7 founded at the same time as Retrophin. So there is this
8 Retrophin foundation document which is also at the beginning
9 of February 2011 and it's founded -- kind of Retrophin is
10 founded at the exact same time as MSMB Healthcare.

11 What I want to do for MSMB Healthcare is the same as
12 I did for MSMB Capital and talk about the investors in the
13 fund, the misrepresentations that were made to them in order
14 to get them to invest, and then the misrepresentations that
15 were made to them after they had invested. And you heard from
16 two MSMB Healthcare investors. David Geller and Richard
17 Kocher.

18 So starting with David Geller, he worked as a trader
19 at a brokerage fund and he was self-employed. And he met with
20 the defendant and his brother -- and when I say his brother I
21 mean David Geller's brother -- in 2011 before he invested. He
22 invested \$200,000 in MSMB Healthcare in June of 2011.

23 And if you remember, there is a story where he
24 sought a redemption in January 2012 after he got additional
25 information about how much the fund had invested in Retrophin.

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1 And he sought to get his money out of the fund and he was
2 convinced not to redeem by the defendant and that's a really
3 important story that we're going to focus on.

4 So starting with the misrepresentations. Again, he
5 was told that MSMB Healthcare would be a long/short, balanced
6 hedge fund, and you can see that from the testimony. He was
7 asked, When you say long/short, what do you mean? And he said
8 that meant that at any time he, in his position balances, he
9 had to have a certain amount of shorts or longs or setting the
10 shorts or longs. So basically that the hedge fund was going
11 to be a mix of stocks and equities and some of them would be
12 bets that the stocks would go up and some of them would be
13 bets that the stocks would go down, but it would be kind of a
14 mix. And that's what it means to hedge, as we're told by a
15 number of witnesses. They're going to make sure you can take
16 one position that it's balanced out by another position. And
17 that was one of the things he was told in order to get him to
18 invest in the fund in the first place.

19 And this kind of representation was also in the
20 private placement memorandum. And if you remember, David
21 Geller actually got two. He got one when he initially
22 invested, sometime before he invested in June of 2011. And
23 then he got an updated private placement memorandum in
24 August -- excuse me, in October of 2011. And we'll talk about
25 the differences between the two PPMs, but a lot of them are

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1 actually the same, the same information was in both PPMs, and
2 this information about the long and short positions is in both
3 PPMs, it doesn't change from the original to the amended PPM.
4 And in both times it talks about having this mix of positions
5 and that no one position is going to be more than 10 percent
6 of the fund.

7 And the representation that MSMB Healthcare was a
8 long/short hedge fund was false. We know this because we know
9 the MSMB Healthcare stopped trading in March of 2012. So it
10 had bank accounts, it had a brokerage account. The brokerage
11 account is where you buy and sell the actual stocks. That
12 brokerage account was actually shut down in March of 2012, so
13 after that point there was no more trading in MSMB Healthcare.
14 At that point MSMB Healthcare basically existed to funnel
15 money to Retrophin. And we know this not only from the
16 brokerage account records but also from Tim Pierotti who
17 testified that he was in the office with the defendant,
18 starting in August of 2011, and that he didn't really observe
19 him doing any trading. Tim Pierotti had been at a lot of
20 hedge funds and he knows what trading looks like and he
21 discussed stocks and he didn't see any of that happening in
22 the office.

23 And as I said, over time MSMB Healthcare's true
24 purpose, which was not disclosed to the investors, was
25 basically to funnel money to Retrophin.

1 And we should actually take an example from Kocher,
2 his investment on May 3rd into MSMB Healthcare of \$100,000.
3 The next transaction in MSMB Healthcare's bank account is
4 \$90,000 of that hundred thousand dollars being shipped over
5 into Retrophin. And you can see this pattern particularly
6 after March of 2012 when there's no more trading. Money
7 that's invested in MSMB Healthcare gets funneled directly into
8 Retrophin. And you can see that money coming in and then the
9 money being moved over to Retrophin. A hundred thousand
10 dollars in, \$90,000 out to Retrophin.

11 The defendant also made misrepresentations about
12 that revised private placement memorandum. So after David
13 Geller invested, he then got this letter, which was dated
14 October 31st, 2011. And the letter, which is Government
15 Exhibit 109-6, talked about how there were going to be changes
16 to the PPM and that MSMB Healthcare would be investing in more
17 illiquid securities and there was information on the
18 performance updates that they had invested in Retrophin. And
19 so this was a letter kind of informing David Geller about some
20 of those changes.

21 As I said, if you actually put the two PPMs next
22 each other, they mostly contain the same information and they
23 still have all of those disclaimers about how you can get your
24 money out in 30 days, how it is a long/short fund, but this
25 letter did kind of make it clear that the fund was going to be

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1 doing more investments into Retrophin and into illiquid
2 securities.

3 And so David Geller, as he testified, was very
4 concerned about this. And he contacted both the defendant and
5 his co-conspirator, Kevin Mulleady, to try and get more
6 information about what did this really mean and did he
7 actually want to leave his money in MSMB Healthcare because,
8 as he testified, he was very concerned about liquidity
9 generally. He had bad experiences in the past with investing
10 in private companies or investing in illiquid securities and
11 so he wanted to make sure this was still kind of this
12 long/short balanced hedge fund.

13 So what were those misrepresentations? Well,
14 there's an email in January of 2012 where he actually
15 officially seeks a redemption following the PPM change and
16 there was testimony about why he had sought the redemption and
17 it was because he was really concerned about this change. And
18 as he testified, he had conversations with the defendant and
19 Mr. Mulleady and those conversations led him to be convinced
20 that he should actually withdraw his redemption request and
21 not actually redeem and get his money out of the fund. And he
22 specifically testified that both Kevin Mulleady and the
23 defendant said, I think the main thing they said was that this
24 private investment letter that they sent to me it was just
25 going to be -- when they did invest in the private other hedge

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1 funds things, that it was going to be a very small portion of
2 the fund. And this was a conversation that took place by
3 phone and it was a conversation that convinced him that even
4 though he had gotten that letter and the revised private
5 placement memorandum, the illiquid securities or the
6 investment in Retrophin was going to be small. It wasn't
7 going to be the whole fund. It was going to be a small
8 portion, he shouldn't worry about the language in the PPM and
9 he shouldn't try and take his money out of MSMB Healthcare.

10 You can actually see this not only in the email that
11 David Geller testified about, but actually in the email
12 between the defendant and Kevin Mulleady, his co-conspirator,
13 which is Government's Exhibit 350, that David Geller didn't
14 see. So David Geller didn't actually see this back and forth,
15 but at the bottom of the email on November 2nd, which by the
16 way is three days after David Geller got that original letter
17 related to the revised PPM, three days after that he actually
18 emailed Kevin Mulleady and said that he had looked over the
19 PPM and that he had a couple of questions and he wanted to get
20 more information. And Kevin Mulleady talks to the defendant
21 and they have a conversation back and forth and at the end of
22 the day the defendant says, tell him that the purpose of the
23 changes to the PPM -- and it's line at the top -- is to make a
24 small investment in Retrophin. Not so that MSMB Healthcare
25 can kind of become a vehicle to funnel money to Retrophin but

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1 that MSMB Healthcare is going to make a small investment. And
2 that's what that revised PPM meant. And this is entirely
3 consistent, this is from November of 2011, with what the
4 defendant and Kevin Mulleady told David Geller in January of
5 2011 at the time that he was, like, I actually want to pull my
6 money out and they had to convince him, again, don't do it,
7 it's still a hedge fund, there's still lots of long/short and
8 the Retrophin investment is really small. So the defendant
9 sends out the revised PPM and that letter and then he
10 basically says, don't worry about it, it's just a really small
11 investment in Retrophin.

12 And, again, the defendant represented to Geller that
13 there was monthly liquidity, which is a little intention with
14 this idea that there were going to be investments into
15 illiquid securities. But this is another lie that the
16 defendant told David Geller in order to get him to invest in
17 the fund. He said -- David Geller said that this liquidity,
18 the ability to redeem in 30 days, which is the same as with
19 the MSMB Capital requirement, was very important to his
20 decision to invest. Again, the statement about being able to
21 pull your money out in 30 days and the fund being liquid is
22 both in the initial PPM and then in that revised PPM that was
23 dated in October of 2011.

24 We know that the representations about liquidity
25 were false. And we know that, again, because MSMB Healthcare

1 invested heavily in Retrophin, which was not liquid, it was a
2 private company at the time and MSMB Healthcare specifically
3 did not have enough funds to make redemptions within that
4 30-day period.

5 So if you look at the chart, which is Government
6 Exhibit 521A, and we went through this with Wendy Spaulding,
7 this is the graph of the ending balances for the bank and
8 brokerage accounts for MSMB Healthcare. And you can see that
9 by 2012, there is very little money actually left in those
10 bank and brokerage accounts. There's very little money to
11 actually provide the liquidity that the defendant promised.

12 Once again, with MSMB Healthcare, the defendant
13 represented that the fund would be audited in addition to
14 having an administrator. MSMB Capital, the lies were very,
15 very clear. The defendant put in auditors Rothstein Kass,
16 Fulvio & Associates, who never did any work for MSMB Capital.
17 It was a lie, there was no auditor.

18 For MSMB Healthcare, the defendant was a little less
19 clear. He, instead of saying that there was a particular
20 auditor and naming it, he included a section in the PPM that
21 said auditors, and then when you went to that section it
22 talked about the administrator NAV Consulting. It also said
23 there would be an auditing firm that the fund would hire. We
24 know from David Geller that he believed -- and I don't have
25 the testimony, but he testified that he thought that there was

1 an auditor and that that was something that was important to
2 him. And it was based in part on this PPM, which suggests
3 there is an auditor and an auditing firm taking a second look
4 at the defendant's performance reports for the fund.

5 Again, the defendant represented to David Geller
6 that he had an impressive track record in the industry. He
7 discussed with David Geller his experience with Jim Cramer
8 and, again he did not mention Elea Capital. And we know that
9 these track record representations were false for the reasons
10 I said at the very beginning, you know, he had already blown
11 up Elea Capital, he just blown up MSMB Capital, so this idea
12 that he had this impressive performance record and was some
13 sort of genius in the investing industry was completely
14 untrue.

15 And, again, as with MSMB Capital, after David Geller
16 put his money in he continued to receive these performance
17 updates that said that the fund was performing well. And his
18 performance updates are Government Exhibits 91 series. I'm
19 just giving you an example of Government Exhibit 91-10, which
20 is the statement for July of 2012, and it shows significant
21 positive returns for David Geller's investment. And we know
22 that the representation that the fund was performing well at
23 this point was a lie because you can see that the fund only
24 has about \$79,000 in July of 2012, at the same time that David
25 Geller is getting a statement saying that his investment has

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1 performed and returned more than 30 percent returns. His
2 investment alone is \$200,000. There is \$79,000 in the bank
3 and brokerage accounts at this point.

4 And, again, this is Government Exhibit 705 this is
5 the chart that Agent Braconi testified about earlier this
6 week. The blue bars, as with the chart we saw for MSMB
7 Capital, are the representations that the defendant is making
8 in the investor statements themselves. So the blue bars
9 represent what the defendant says the fund has in it. And the
10 red bars are what is actually in the bank and brokerage
11 accounts for the fund. And you can see that over time the
12 difference between what the defendant says about the fund's
13 performance and what is actually in the bank and brokerage
14 accounts. There is an enormous difference. It is clear that
15 the statements that the MSMB Healthcare investors are getting
16 are false.

17 Now, one question that Agent Braconi got on
18 cross-examination about this chart was the question about,
19 well, MSMB Healthcare invested money in Retrophin and that is
20 true. They invested -- MSMB Healthcare, again, was used
21 primarily to funnel money to Retrophin unbeknownst to the
22 investors and over time it funneled approximately \$2.1 million
23 to Retrophin. And it did that in a time period between
24 approximately the summer of 2011 and December of 2012. But
25 you can see that even if you were to add taking the last month

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1 there, July of 2012 -- and by July 2012, the 2.1 million had
2 not yet gone into Retrophin, but even if you take that
3 \$2.1 million that went into Retrophin and you add it to the
4 bank and brokerage account, it doesn't even come up to halfway
5 where the defendant said the value of MSMB Healthcare was. So
6 just to keep that in mind, the bank and brokerage accounts
7 don't take into account the amount of money that was moved
8 over to Retrophin but even if you did, those performance
9 reports are not accurate.

10 So the next investor I want to talk about is Richard
11 Kocher, who is the second MSMB Healthcare investor you heard
12 from. If you remember Mr. Kocher owns and runs a construction
13 business in New Jersey and he was recruited to MSMB Healthcare
14 by co-conspirator Kevin Mulleady. He invested \$100,000 in
15 MSMB Healthcare on February 1st, 2012, and then he invested an
16 additional hundred thousand dollars in MSMB Healthcare on
17 May 3rd, 2012, in response to what he was told was an urgent
18 request by Kevin Mulleady. And if you remember, we just
19 looked at that transfer a couple of minutes ago when I was
20 saying that by the spring of 2012 MSMB Healthcare was
21 basically just being used to funnel money to Retrophin. If
22 you remember that May 3rd, 2012 investment into MSMB
23 Healthcare, that hundred thousand dollars that Kevin Mulleady
24 told him they needed urgently for an MSMB Healthcare
25 investment, was immediately moved over, \$90,000 of the hundred

1 thousand dollars was immediately moved over to Retrophin.

2 And so let's just walk through some of the
3 misrepresentations to Richard Kocher. Prior to the initial
4 investment, Mulleady represented that the investment would
5 have monthly liquidity. You can see the testimony from
6 Richard Kocher here from transcript at page 2318. He says --
7 he's asked, Would you still have invested in MSMB Healthcare
8 if you couldn't get your money out in a month's time? And he
9 responded, no, because, general speaking, I have very little
10 cash. So when a project comes up I need to be able to have
11 money on hand. And it was very clear from Mr. Kocher's
12 testimony that liquidity was the most important thing he was
13 looking for when he was thinking about investments, because he
14 runs a construction business and he needs to have a certain
15 access to cash to kind of, as things come up and as project
16 are completed he needs to be able to move that cash around, so
17 he was very focused on whether or not he would be able pull
18 his money out in 30 days if he needed to and he was assured
19 multiple times that he would be able to pull his money out in
20 that time frame as required.

21 (Continued on the next page.)
22
23
24
25

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1 MS. SMITH: (Cont'g.) Sandy just gave me a chance
2 to take a water break, thanks.

3 And we can see that liquidity was actually so
4 important to Mr. Kocher that before he made his second
5 investment in the fund he made sure that both the defendant
6 and Kevin Mulleady promised that not only could he get his
7 funds out in a month if he needed that but he actually signed
8 a side letter to make sure that if he needed money on a quick
9 basis in a week he could get it out, and that's Government
10 Exhibit 107-11.

11 And you can see that the letter is dated in May of
12 2012 and it represents that -- it is a little faded -- but it
13 represents that if Mr. Kocher wants to take his money out in a
14 week he has the ability to do that separate and apart from
15 anything that might be in the Private Placement Memorandum and
16 the defendant signed that letter and agreed to those terms for
17 Mr. Kocher and you can see there the actual terms of that
18 liquidity, getting your money out in a week and the
19 defendant's signature.

20 And, again, as we've seen, the representations about
21 liquidity were false because the fund was invested heavily in
22 Retrophin and that itself didn't have any additional funds
23 that could be used to provide liquidity and those are just
24 kind of two calculations in May of 2012, there's \$9,000 in the
25 bank and brokerage accounts in September 2012 which, again,

1 becomes important because of the wind-down email. At the end
2 of the month in September of 2012 there's \$614 in MSMB
3 Healthcare's bank and brokerage accounts.

4 As with all of the investors in MSMB Capital and
5 MSMB Healthcare, the defendant falsely represented to Kocher
6 that his investment had continued to perform well and so his
7 investment statements are Government Exhibits 83-1 through
8 83-4 and they show overall positive returns, and this is an
9 example of the statement from July of 2012 and, again, keep in
10 mind this is a statement sent by the defendant on
11 September 9th, 2012, so this is right at the same time as he
12 is making the representations to MSMB Capital investors about
13 the performance of their funds, he's also sending out these
14 performance updates to MSMB Healthcare and while MSMB
15 Healthcare, unlike MSMB Capital, actually had some money left
16 in it, it did not have the performance returns that the
17 defendant was promising as you can see in Agent Braconi's
18 chart.

19 And these are just some additional
20 misrepresentations by the defendant in connection with MSMB
21 Healthcare. Again, in September of 2012 he represented that
22 Kocher and Geller and the other investors could redeem their
23 investments for cash and then again that's the wind-down email
24 and that representation was a lie as well. Again, as we
25 talked about with MSMB Capital, we wanted to focus on

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1 materiality. So, why are these lies important, what about
2 these lies actually caused investors to put money with the
3 defendant or to keep money with the defendant, and I think
4 that you will see when you think about the evidence that these
5 misrepresentations were targeted towards getting people to
6 invest in the fund, they were about the fund, they were things
7 that people were asking about liquidity or the mix of the
8 fund, what is in the fund, and the defendant was making these
9 misrepresentations because he knew that by saying these
10 things, he would convince people to give them his money.

11 And we know this from the testimony as well as, you
12 know, when you think about it, again, it's that reasonable
13 investor standard, what would a reasonable investor want to
14 know about a hedge fund they were putting money in, what kind
15 of things is the fund invested in, when can I get my money
16 out, these are things that a reasonable investor would want to
17 know. And we heard testimony from both Kocher and Geller to
18 that effect on different aspects of the defendant's lies.

19 So, for liquidity, again, Kocher testified at length
20 that liquidity was important and I actually put up this cite
21 earlier but basically he was saying that cash is very
22 important to the business, when a project comes up he wants to
23 be able to have money on hand, and so those representations
24 about liquidity both before his original investment and then
25 the side letter before his second investment were incredibly

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1 important to his decision and he would not have invested if he
2 didn't think he could get his money out. And David Geller
3 testified similarly that the liquidity representations were
4 important to him.

5 Again, the representations about the percentage of
6 MSMB Healthcare that would be invested in Retrophin were
7 important to investors. Geller basically testified that, you
8 know, he was concerned when he got that letter and that second
9 PPM and it was only after talking to the defendant and
10 co-conspirator Kevin Mulleady, being told don't worry about
11 it, we're just making a small investment in Retrophin, was the
12 reason that he actually didn't try and take his money out, so
13 that was a lie to get him to keep the money in the fund.

14 And, again, this is additional testimony that said,
15 you know, that basically it was important for him to know what
16 the mix was and when he found out in 2013 that the fund had
17 invested solely in Retrophin and that Retrophin was the only
18 thing left in the fund, his reaction was, he said I was
19 disappointed and angry, I wasn't getting the answers I was
20 looking for but at the same time kind of getting the worst
21 case -- putting the worst case scenario in my mind and he said
22 this because, again, he had bad experiences investing in
23 illiquid securities in the past, he doesn't want a private
24 equity investment or an illiquid investment, he wanted a hedge
25 fund that was a mix and the reason he didn't pull his money

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1 out was that the defendant promised him it was only going to
2 be a small piece in Retrophin and that was a lie and when he
3 found out about it in 2013 he was very upset because the whole
4 reason he had asked those questions in the first place is
5 because he wanted to know whether he should make this
6 investment.

7 And, again, track record, we talked about this
8 before, Kocher testified that if the defendant had had a prior
9 hedge fund that had performed poorly, it would have been
10 important for him to know at the time of his investment and we
11 know, of course, that there were two prior hedge funds at this
12 point that had performed poorly that the defendant was
13 running.

14 And Geller also provided some more testimony. And,
15 again, the accuracy of the performance reports was important
16 to the investors, it allowed them to keep track of their
17 investment and to make decisions about whether they should
18 leave their money in or they should take their money out and
19 this is some testimony from Geller about why those performance
20 statements are actually important.

21 And, again, the representations about the auditors,
22 why those are important, the idea that there is a third party
23 who is passing on the performance reports and making sure that
24 they're actually correct and that they line up with the
25 representations that are made in testimony.

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1 And in terms of intent, again, the defendant needs
2 to be acting knowingly and purposefully and the
3 representations that you have seen from MSMB Healthcare
4 already show that because there's no reason to say that
5 there's an auditor when there's not unless you're trying to
6 convince somebody to put your money in and to feel comfortable
7 doing that and that's the same with the liquidity and all of
8 the other misrepresentations that you heard so far.

9 But there's also some additional testimony that I
10 think shows the defendant's intent here. You know, the
11 discussion about what was actually in MSMB Healthcare, which
12 is this testimony, which is David Geller being told directly
13 by the defendant the securities in question, the private
14 securities they were going to go into would be a very small
15 part of the portfolio and this is at a time that the defendant
16 is already using MSMB Healthcare to funnel money to Retrophin
17 in January of 2012, it is only two months before they stopped
18 trading altogether, a lot of money has already been moved over
19 and ultimately, as I said earlier, MSMB Healthcare is just
20 used to kind of prop Retrophin up and the defendant knows that
21 because he's running MSMB Healthcare, he's running Retrophin
22 at the same time and yet, he's telling David Geller, you know,
23 don't worry about it, it is just going to be a small portion
24 of MSMB Healthcare.

25 And, again, that's the email that we have from Kevin

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1 Mulleady discussing what to tell David Geller, how to keep him
2 from pulling his money out because they want to use that money
3 for Retrophin. The defendant, as with MSMB Capital, had
4 access and signatory authority over all of the bank accounts,
5 the brokerage account. You can see the main bank account for
6 MSMB Healthcare has both signatures of Mr. Shkreli and
7 Mr. Biestek who also worked on MSMB Healthcare, he also runs
8 MSMB Capital, stopped functioning, just moved right on over to
9 Healthcare and continued to be involved in that fund and you
10 can see all the signatures there fore Mr. Shkreli getting all
11 the information from the bank accounts as well as Mr. Biestek
12 on this first bank account.

13 And this is Government Exhibits 126-21 and 126-32.
14 I'm just having a little trouble with the screen so I'm going
15 to pull it up for you.

16 I wanted to put these exhibits up to talk about
17 NAV Consulting for a minute because unlike MSMB Capital which
18 didn't have an administrator, NAV Consulting, as you heard
19 testimony, helped put together the performance reports for
20 MSMB Healthcare up until a certain point. So, we have a
21 stipulation that they were the administrator between March
22 of 2011 and May of 2012. After that point the defendant is
23 sending out the performance reports himself. So, those
24 performance reports that go out in September, those are
25 directly from the defendant, NAV Consulting isn't involved

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1 anymore, but NAV Consulting testified that the information
2 that goes into the performance reports is entirely from the
3 client, they are not an auditor, they do not do checks and you
4 can see from the documents we put in from NAV Consulting that
5 it is the defendant that is providing the information that's
6 going into those performance reports.

7 So, the top email, the defendant talks about how he
8 and Marek Biestek are going to be the two people who are
9 approving transactions and releasing funds from MSMB
10 Healthcare. And the bottom email is from the defendant's
11 administrative assistant who says: I don't deal with this
12 fund. If you want information on the fund, NAV Consulting,
13 you need to go talk to the defendant.

14 So, it's just to keep in mind that those earlier
15 performance reports which if you look at Agent Braconi's
16 chart, there are some earlier which are closer to being
17 accurate, but there's a point after which NAV Consulting isn't
18 involved and I think at that point you can see that the
19 performance reports and the reality diverge even more greatly
20 but even while NAV Consulting is involved, the only
21 information they're getting is from the defendant and the bank
22 and brokerage records.

23 Again, in terms of intent, you know there's a
24 discussion here about the pitch book for MSMB Healthcare and
25 we're going so see that in a minute but Kevin Mulleady, who is

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1 a co-conspirator, is talking about touching up the pitch book
2 in January of 2012 and that's one of the slides that show that
3 is used to kind of pitch MSMB Healthcare and he says: I'm
4 going to touch up the pitch book, take out the side pocket
5 comments LOL.

6 The side pockets, we'll see it in a minute, there's
7 a line in the pitch book that says "no side pockets" meaning
8 have no places where we're going to stick money or illiquid
9 securities and it's only in January 2012 where he's jokingly
10 saying, oh, I guess at this point I should take that out, that
11 comment, which is months after they started funneling money
12 into Retrophin.

13 This exhibit is also notable because they're asking
14 for a reference for the defendant and he gives the name Ed
15 Sullivan which is that same person who the defendant was
16 asking to give him a reference earlier and saying stay away
17 from legal and audit and accounting, he's using that same
18 person to try and get investors to trust him now for MSMB
19 Healthcare.

20 And, again, you can see that the defendant, despite
21 knowing how much money is in the bank and brokerage accounts
22 and how much money that's been transferred over to Retrophin,
23 is still saying that the AUM for MSMB Healthcare is
24 \$55 million in April of 2012.

25 And, again, this last piece that I want to talk

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1 about for intent has to do with the management fee and, as you
2 know, approximately \$3.5 million was invested in Healthcare,
3 Agent Braconi testified about that, you can also see it in the
4 bank and brokerage records, which would mean that the
5 management fee would be 3,000 -- excuse me, \$35,000 and,
6 again, there were no profits for MSMB Healthcare so there
7 wouldn't have been a right to a 20 percent incentive payment
8 and given that the \$35,000 figure, it is significant that the
9 defendant misappropriated \$900,000 from the fund without
10 getting the permission of the investors to repay a personal
11 debt that he and Marek Biestek and MSMB Capital owed to
12 Merrill Lynch and this is kind of some of what we walked
13 through with Wendy Spaulding when we were looking at the bank
14 accounts but I kind of want to explain this \$900,000 note and
15 how it was used to take money out of MSMB Healthcare and loot
16 the fund for the defendant's personal expenses.

17 So, on February 1st 2012 MSMB Healthcare invested
18 \$900,000 into Retrophin, and that's Government Exhibit 126-5,
19 and every time they invested money into Retrophin, just like
20 an investor, MSMB Healthcare would get a subscription
21 agreement which is basically like the initial agreement that
22 some of our investors got that says this is how much you have
23 invested in Retrophin. And the defendant takes that agreement
24 and he sends it to NAV Consulting and so it lines up with the
25 bank account where you can actually see the \$900,000 going

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1 from MSMB Healthcare into Retrophin and this is part of the
2 investments that MSMB Healthcare made into Retrophin over the
3 course of its existence, part of that \$2.1 million. And you
4 can see three that it's dated February 1st and that the amount
5 is \$900,000. So, this is an investment, I'm putting \$900,000
6 from Healthcare into Retrophin and I'm getting shares in
7 return. And that's the actual bank transfer that shows that
8 the money went from Healthcare to Retrophin.

9 If we look at the cap table for Retrophin, which
10 we've heard that a lot, the capitalization table, which is
11 basically the list of individuals who own shares in a company
12 either because they were an employee and they were gifted
13 shares or because they actually invested; if we look at the
14 February 2012 cap table which is made right after this
15 investment, you can see that February 1st investment from
16 Healthcare into Retrophin on the cap table, so that they've
17 actually received shares in return for their investment and
18 you can see that that investment remains on the cap table from
19 February 2012 all the way to November 2012 and there were a
20 lot of cap tables we put in evidence and if you look at any
21 one of those cap tables in between those two time periods,
22 this investment is on those cap tables.

23 And in November, however, there's this email that we
24 talked about with Corey Massella, who is the witness from
25 Citrin, and he talked about how there was some confusion

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1 because they were seeing that \$900,000 investment into
2 Retrophin from Healthcare but they were also seeing this note
3 that they hadn't seen before and it was a promissory note that
4 basically said that Retrophin owed MSMB Healthcare \$900,000.
5 So, they were both seeing an investment into Retrophin and
6 what they were thinking was a loan and if you had seen both an
7 investment and a loan of \$900,000, you would actually see a
8 total of \$1.8 million going from Healthcare to Retrophin
9 because \$900,000 would be for the shares and the additional
10 \$900,000 would be the loan and they were very confused because
11 their records showed the investment and then they were handed
12 this note and they only saw \$900,000, so that \$900,000 was
13 either an investment or a loan but it couldn't be both
14 basically.

15 And this is the \$900,000 note which is dated
16 February 1st, 2012 and signed by the defendant and basically
17 this says that Retrophin owes MSMB Healthcare \$900,000. So,
18 it's basically saying that that \$900,000 wasn't to buy shares,
19 it was just a loan from MSMB Healthcare to Retrophin. And you
20 can see that the defendant on December 3rd actually goes back
21 into the cap table and says that that investment which, by the
22 way, he's been relying on in the performance reports and in
23 representations to MSMB Healthcare between February and
24 December has now been disqualified and he's saying, you know,
25 there shouldn't -- it shouldn't have been an investment, it

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1 was actually a loan, I have a promissory note, there was no
2 investment, the money is owed from Retrophin back to MSMB
3 Healthcare and that's on December 3rd, 2012.

4 And it's significant, the timing, because as a
5 result of the settlement agreement to resolve the dispute with
6 Merrill Lynch, the defendant, Marek Biestek and MSMB Capital
7 owed at least a million dollars to Merrill Lynch by
8 December 15th and if you remember when we talked about the
9 Merrill Lynch settlement, there were actually three settlement
10 agreements, there was the original one and then there were two
11 amendments because the defendant wasn't able to pay the amount
12 that was due initially and so they kept extending the time
13 that he had to make this element payment out but originally
14 this element payment was due on December 15th and so at the
15 time that the defendant reclassifies that investment as a loan
16 which would let him move the money from Retrophin back to MSMB
17 Healthcare he's looking down a debt of \$1 million that's due
18 on December 15th, 2012.

19 The problem was that at this time in early
20 December 2012 Retrophin didn't have any money so even if the
21 \$900,000 was owed from Retrophin to Healthcare, there was only
22 \$11,000 in Retrophin, there was no way to get any money out of
23 Retrophin because there was no money in the bank account and
24 so the defendant entered into an amended settlement agreement
25 to buy himself more time to make that Merrill Lynch payment

Summation - Smith

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1 and you can see that the extension is signed on December 13th
2 and that it gives him until January to make a payment.

3 And then there's a second amendment, as I just said,
4 that extends the time until after the Retrophin pipe and
5 that's signed on January 8th, 2013 and so we talked a little
6 bit about the pipe, you know, in December of 2012 Retrophin
7 has no money and then they do kind of a -- they get investors
8 to put money in in a private placement in February and so what
9 happens is Retrophin's bank account has no money and so the
10 defendant extends out when he has to repay Merrill Lynch until
11 after people are going to put more money into Retrophin.

12 And then what happens is the defendant causes that
13 \$900,000 note to be repaid in January and then in March, so he
14 takes the money from Retrophin and puts it back to MSMB
15 Healthcare saying that it had been a loan and now Retrophin is
16 repaying MSMB Healthcare. What's really important is that the
17 money doesn't actually go to MSMB Healthcare. So, the money
18 originally belonged to MSMB Healthcare, he said it was an
19 investment, now he's saying it is a loan so it should go back
20 to MSMB Healthcare and it belongs to the investors who put
21 their money in MSMB Healthcare in the first place but instead
22 of sitting in MSMB Healthcare and it being distributed back to
23 the investors, it goes to pay the defendant's personal debt to
24 Merrill Lynch.

25 And you can see this with the bank accounts, there's

Summation - Smith

5237

1 the original payment of the note on January 18, 2012, it is
2 \$125,000. So, the defendant pulls part of the money for the
3 note out of Retrophin, puts it back in Healthcare. Again,
4 that's the money that the investors put into Healthcare. You
5 know, if it wasn't an investment in Retrophin, it belonged to
6 MSMB Healthcare and he's using it to pay his personal debt to
7 Merrill Lynch and the debt of MSMB Capital. So, that first
8 payment is made in January of 2013 and then the final
9 repayment of the note is made in March of 2013 and in total
10 there's the first \$125,000 payment and then there's a \$773,000
11 payment and that money is used to meet the \$1.3 million that
12 he owes to Merrill Lynch.

13 So, it is really important to try and keep track of
14 that, how that worked with the original investment into
15 Retrophin. Then the defendant says it was a loan, it should
16 go back into Healthcare and instead of actually going back
17 into Healthcare, it is used to pay his personal debts. So,
18 that \$900,000 is taken from the investors of MSMB Healthcare
19 and used for the defendant's personal debts.

20 And so, you can see there is additional money
21 transferred directly from Retrophin to Merrill Lynch in
22 connection with some of the payments and, in addition, on
23 March 4th the defendant takes money out of Retrophin,
24 \$575,000, cycles it through his personal account and sends it
25 to Merrill Lynch. So, the Merrill Lynch payment that was owed

Summation - Smith

5238

1 by the defendant and Marek Biestek and MSMB Capital winds up
2 getting paid by MSMB Healthcare investors, that \$900,000 that
3 got cycled through Retrophin and by Retrophin itself.

4 And this is you can see that the defendant says that
5 the money that was moved from Retrophin to Healthcare was a
6 repayment of the note, this is one of the documents we looked
7 at from Corey Massella where the defendant was kind of going
8 through the cash transactions and saying what everything was
9 for, and you can see that he's classifying the \$575,000 he
10 took directly out of Retrophin for his personal account as a
11 salary repayment and the other two payments that were
12 originally from MSMB Healthcare were debt repayments.

13 And you can see that there was testimony to the SEC
14 in February of 2012 about using money from Healthcare to repay
15 Merrill Lynch and the defendant has this kind of long
16 explanation and he talks about how he discussed it with Marek
17 Biestek and that he tried to document it and he wasn't able to
18 do so. Let me just pull up my copy. And he says that the
19 loan is going to be paid back and, you know, that this was all
20 just kind of, you know, he didn't have to pay it out of
21 Healthcare, it was a loss suffered by Capital. It was kind of
22 this long winding explanation for what happened. He talked
23 about it with Marek, he didn't want anyone to know what he had
24 done.

25 And then they were asked whether they had actually

Summation - Smith

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1 documented the loan and he said that they tried to but they
2 had been unable to and the loan that he's talking about here
3 is -- you know, so not only is he saying there was a loan from
4 Healthcare to Retrophin that got repaid but then he's saying
5 when he paid Merrill Lynch, he was just taking a loan from
6 MSMB Healthcare, he was going to pay them back trying to give
7 an explanation for why he hadn't just taken the funds from
8 MSMB Healthcare.

9 And then, again, the elements of conspiracy for MSMB
10 Healthcare, the co-conspirators involved again are Marek
11 Biestek and then also Kevin Mulleady. As we saw, Biestek was
12 involved in the use of funds to repay Merrill Lynch from
13 Healthcare that \$900,000 that was just taken from the MSMB
14 Healthcare investors. Both co-conspirators were involved in
15 marketing and running the fund. There's a pitch stack that
16 was sent to a potential investor in September 2011 that lists
17 each of their roles in MSMB Healthcare.

18 And then, if you remember, there was that
19 conversation between Kevin Mulleady and Caroline Stewart which
20 is in I believe May of 2012 and it is this IM chat that they
21 have and during that conversation Caroline Stewart talks about
22 how the defendant blew up twice, she's referencing Capital and
23 Elea at that point, one before my time, that nobody is getting
24 paid. She says to Kevin Mulleady: Ask yourself how is he
25 going to pay everybody, the fund has a negative return right

Summation - Smith

5240

1 now and he's probably got tiny assets under management anyway.
2 And again she talks about blowing up. And this is a whole
3 back and forth between Kevin Mulleady where he's clearly on
4 notice at this point, if he didn't know already, that the
5 defendant has had these problems in the past and I think what
6 you can see from what happens with this IM chat, you can kind
7 of see how the conspiracy is working.

8 So, they have this back and forth between Caroline
9 Stewart and Kevin Mulleady and then what does Kevin Mulleady
10 do with that IM conversation, and we saw this through Agent
11 Braconi, Government Exhibit 349, he forwards it to Marek and
12 he says: We should talk about this, don't need an issue
13 blowing up, obviously please don't forward to Martin at this
14 point. And then he forwards it to Marek again and then he
15 forwards it directly to the defendant and the defendant's
16 response is: Yeah, humorous how confused she is, seems very
17 emotional, oh, well.

18 So, this is the three of them discussing Stewart's
19 complaints and concerns about the defendant blowing up prior
20 funds.

21 And then we can see Government Exhibit 353 which,
22 again, we looked at with Agent Braconi which is an email from
23 Kevin Mulleady and it's sent to himself and he has a number of
24 comments which show his knowledge about what's going on at
25 MSMB Healthcare at this point which is June 2011. So, some of

Summation - Smith

5241

1 the comments he makes are: Equity in funds??? 100 positions
2 is a lie. 30 percent? How dare you take that risk, he says,
3 how many funds you blowing up, seriously you think I'm stupid.
4 And then at the bottom there he says: You have 100 positions,
5 your positions are never big.

6 So, these are a bunch of complaints and concerns he
7 has about the funds and about the defendant.

8 And what does Kevin Mulleady do next? So, this is
9 June of 2011, this is a pitch stack that he puts together for
10 MSMB Healthcare in August 2011, so after he's made clear that
11 he knows kind of what the defendant's history is and also that
12 the defendant is lying about the fund itself. So, this is a
13 pitch stack that he sends to the defendant in August of 2012
14 and what does it say in the pitch stack, it says: Possession
15 sizing attribution loss 1 percent limit, 10 percent position
16 limit. Then it said: Diversified portfolio, 100 positions on
17 average.

18 So, he knows that that's not true and he's putting
19 it into a pitch stack. And then what happens with that pitch
20 stack -- oh, sorry, the August 2011 pitch stack also contains
21 information that at this point we know is false which is that
22 Rothstein Kass and that Kleinberg Kaplan are doing work for
23 Healthcare and there are stipulations that neither of them did
24 that work.

25 And then at the bottom you can see it says: No

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5242

1 gates, no side pockets, illiquid securities or other tricks.
2 And that's the language I was talking about earlier that they
3 were joking about they should finally take that out months
4 after they've done the investments into Retrophin and that's
5 that language.

6 And then it is not on here but this pitch stack is
7 at that point sent to the defendant and then within a month a
8 very similar pitch stack with the same language about no gates
9 and side pockets and with that 100 positions that Kevin
10 Mulleady knows is not true is sent out to a potential
11 investor.

12 And then again we have the overt acts that we need
13 for the securities fraud conspiracy which is Count Four and we
14 put two in here. So, one is that on or about April 18th,
15 2012, Shkreli sent an email to Kevin Mulleady, and it's the 55
16 AUM, and then again this is the overt act that talks about the
17 wind-down email that was sent to MSMB Healthcare and there are
18 a number of them listed in the indictment and they all line up
19 with acts that we have shown in the course of the evidence.

20 And venue, so when I talked about venue the first
21 time I didn't explain it as clearly as I could have; venue
22 means something in connection with the case touches on the
23 Eastern District of New York which is where we are which is
24 Brooklyn, Queens, Nassau, Suffolk and Staten Island. And we
25 showed that for MSMB Healthcare and we can show that -- we

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1 showed it for MSMB Capital, we can show it again for MSMB
2 Healthcare. So, Spencer Spielberg who is an investor whose
3 investment statements are in evidence, that's the 90 series,
4 lived in Brooklyn and Seymour Block who was another investor
5 whose investor statements are in evidence lived in Nassau
6 County and, again, the defendant lived in Brooklyn, Biestek
7 lived in Queens kind of during this time period of the
8 conspiracy and, again, there are phone calls and emails and
9 wire transfers.

10 So, that ends the evidence for MSMB Healthcare. As
11 with MSMB Capital, there's just really overwhelming evidence
12 that the defendant lied to the investors to get their money to
13 put into the fund and then lied to the investors to make sure
14 they didn't take it out. David Geller is a very, very clear
15 example of that, of somebody who actually said he wanted to
16 take his money out and then he was given more lies about the
17 size of the investment into Retrophin to convince him not to
18 take his money out of that fund.

19 And so, that's securities fraud conspiracy, wire
20 fraud conspiracy and securities fraud for MSMB Healthcare.

21 And then the next count we're going to talk about is
22 Count Seven which is the Retrophin misappropriation account.

23 Just give me one minute.

24 (Pause.)

25 So, Count Seven is that the defendant and his

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1 co-conspirators defrauded Retrophin in three separate ways,
2 the first was the creation of a fraudulent interest in
3 Retrophin for MSMB Capital through backdated documents, the
4 second was causing Retrophin to enter into settlement
5 agreements to repay the obligations of the defendant and MSMB
6 entities and they entered into those agreements with MSMB
7 Capital investors and MSMB Healthcare investors and you saw a
8 lot of testimony about that during the trial, and then the
9 third way is that it forced Retrophin to enter into consulting
10 agreements to repay the obligations of the defendant or MSMB
11 Capital and they entered into consulting agreements with
12 Darren Blanton who is an MSMB Capital investor and also the
13 Elea Capital investor, Lee Yaffe.

14 So, those are the different ways in which the fraud
15 in Count Seven is charged. You can find the defendant guilty
16 on this count if you find any one of those three or any one of
17 the settlement or consulting agreements as long as you are all
18 unanimous about which of those acts you agree on.

19 I am going to walk you through the evidence that
20 shows that the defendant is guilty of all of these various
21 means that are charged in Count Seven but, again, you only
22 need to find one unanimously.

23 So, the time period again is from 2009 to 2014 and
24 it charges a wire fraud conspiracy only. And again wire fraud
25 conspiracy, you need to show a conspiracy to commit wire fraud

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1 and that the defendant knowingly and intentionally became a
2 member of the conspiracy and, again, the judge's instructions
3 on the law will govern but I expect that she says that for
4 conspiracy the agreement to enter into the conspiracy to agree
5 to do the act is sufficient to show the conspiracy, you don't
6 actually have to show that a fraud occurred, there just had to
7 shall an agreement to commit the fraud.

8 And just so you have a sense, again, the elements of
9 wire fraud themselves, so the crime that you would be agreeing
10 to commit is a scheme or artifice to defraud, that the
11 defendant knowingly and willingly participated in that scheme
12 and then, again, that there were interstate wires, like phone
13 calls or emails that crossed state lines in furtherance of
14 that scheme.

15 So, the first one of those three is the MSMB Capital
16 interest in Retrophin. And as we said before, MSMB Capital
17 did not invest in Retrophin, there was no money transferred,
18 it was blown up and dead before Retrophin was even founded.
19 And, again, that's the testimony of Wendy Spaulding and the
20 bank accounts show that.

21 That February 2012 cap table, the one we were
22 looking at with the \$900,000 investment for Healthcare, MSMB
23 Capital is not on that cap table as an investor which, again,
24 is not a surprise because it didn't invest but starting in
25 February 2012, which I believe is the earliest cap table in

Summation - Smith

5246

1 evidence, you can see that MSMB Capital is not on the cap
2 table. And then, again, September 5th, 2012 cap table MSMB
3 Capital is not on that cap table either. And that
4 September 5th, 2012 date is significant because that's the
5 date of the settlement agreement with Merrill Lynch where the
6 defendant says MSMB Capital has zero assets.

7 So, it lines up, MSMB Capital has no money and has
8 no assets, he's telling Merrill Lynch that and it is not on
9 the cap table, so there was no interest for MSMB Capital in
10 Retrophin at this point.

11 Then we get to November of 2012 and the defendant
12 tells the SEC in November of 2012 that MSMB Capital has a
13 \$2.6 million assets under management, so that MSMB Capital has
14 some assets and that they're worth \$2.6 million and we know
15 this was false, again, from bank and brokerage records and
16 from everything else that we've seen but this is what the
17 defendant has represented and he says in his cover letter for
18 this that the most -- the largest and most successful effort
19 between -- for MSMB including MSMB Capital has been the
20 investment in Retrophin.

21 So, not only is he saying that MSMB Capital has
22 \$2.6 million but he's saying that's because we've invested in
23 Retrophin which as we we've seen from the cap tables and the
24 bank records isn't true but that's what he's telling the SEC
25 on November 4th, 2012.

Summation - Smith

5247

1 So, what does the defendant do next. Well, on
2 November 5th, which is the day after MSMB Capital still isn't
3 on the cap table, and then the defendant and Evan Greebel, who
4 is a co-conspirator for Count Seven and Count Eight and who
5 you're going to hear a lot about, they begin to discuss
6 something called share transfers in late November 2012 and
7 this is the email back and forth and the defendant says that
8 he wants to transfer shares and he wants to cancel the
9 transfer and they discuss how you might move shares back and
10 forth and this is Government Exhibit 221 and the date is
11 November I believe 26.

12 And then what we get on November 29th is the first
13 version of the share transfer from Marek Biestek to the
14 defendant and if you remember, we walked through this with
15 both Jackson Su and Corey Massella. These were the agreements
16 where Marek Biestek is agreeing to give the defendant shares
17 and if you remember Mr. Massella's testimony, he said this was
18 strange because normally an employee, and at this point Marek
19 Biestek was an employee of Retrophin, is not giving shares
20 back to the CEO or the head of the company, and in the
21 transfer agreement there's nothing that Marek Biestek is
22 getting in return so it seemed to him to be a very, very
23 strange agreement.

24 And they're circling in this agreement because
25 they're trying to figure out who has what on the cap table

Summation - Smith

5248

1 before Retrophin becomes a public company and they distribute
2 the shares, so this is the first version of that transfer
3 agreement. And if you remember, this was the signature page
4 for the transfer agreement which was scanned in kind of
5 sideways. And if we blow up the signature there, it's signed
6 by both Marek Biestek and Martin Shkreli and the date that was
7 put on the document was the date that it was handed to Mr. Su
8 which was November 29th, 2012, and so basically this first
9 version has the signatures and it has the date on which
10 Jackson Su testified this document was dropped on his desk and
11 he put the date on it, and that's Government Exhibit 119-15.

12 So, then we get to Government Exhibit 123-2 which
13 was Mr. Massella's response to receiving the share transfer
14 agreement and he gave the very accountant-like response of
15 saying this was his way of saying "what the heck" and so he's
16 seeing this and he said the reason he was confused is why
17 would an employee give shares back to the head of the company
18 and also, if you will remember, this is very close in time to
19 when the reverse merger actually happens and every time there
20 is a share transfer like this they have to redo all the
21 financials, so Citrin is running around like crazy trying to
22 get ready and they're getting inundated with all of these
23 transfers and that's why he had that reaction.

24 The defendant's reaction was a little bit different
25 and the defendant said -- well, first Evan Greebel said that

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5249

1 the share transfer needed to be changed from Retrophin LLC to
2 Retrophin, Inc. because, if you remember, Retrophin was
3 originally a limited liability company and then before it went
4 public it became a corporation, and then the defendant said,
5 no, that agreement was signed in June.

6 And so, we then get Government Exhibit 119-17 and
7 that's the defendant's response, that agreement was signed in
8 June. We get the second version of the transfer agreement
9 from Biestek to the defendant, and this agreement is now
10 scanned in properly, but if we zoom in you can see that Marek
11 Biestek and Martin Shkreli have signed it and then there's
12 redacting tape over the date for both and it is now dated
13 July 1st, 2012. And you can see Marek Biestek's address there
14 in East Rockaway, New York as well.

15 So, that's the second version. That's actually the
16 defendant said, no, that agreement was signed in June. Then
17 the defendant -- then the dates are changed to July 1st with
18 redacting tape.

19 And then there's another email from Mr. Greebel to
20 Mr. Su and it says: Please call me after he gets the version
21 with the redacting tape on it. That's Government
22 Exhibit 119-18. That's the circle is where Mr. Greebel says:
23 Please call me.

24 And then we have the third and final transfer
25 version which is Government Exhibit 119-19, same transfer and

Summation - Smith

5250

1 donee representation letter, same transfer from Marek Biestek
2 to the defendant, and this third version has the date
3 June 1st, 2012, and instead of being written or taped over
4 with redacting tape, now it is actually typewritten out.

5 So, we have three various versions of this signed
6 agreement and you can see the dates across all three. So,
7 first it is November 29th which is the date on which the
8 agreement was actually circulated and keep in mind, as we
9 heard from Mr. Massella, they had been working on this reverse
10 merger for months, they were trying to pull together all of
11 the information they needed to kind of figure out who owned
12 what and what was going on so they can get the financials
13 ready to take Retrophin public and, you know, they had been
14 looking for documents and asking for documents and documents
15 like this were showing up a week before the company went
16 public just like that \$900,000 note.

17 So, it is important to keep in mind during this time
18 period that documents like this are kind of just appearing at
19 the very end and it is causing Mr. Massella to reorganize
20 everything but in terms of the timing of when those documents
21 appear, it's right before the merger and here we have kind of
22 three different dates for one of these documents that is just
23 popping up at the last minute.

24 So, this is a transfer of shares from Biestek to the
25 defendant. There are also two other transfers that we see at

Summation - Smith

5251

1 the same time. One is from Kevin Mulleady to the defendant
2 and he agrees to the share transfer on November 30th, 2012,
3 and that's Government Exhibit 223.

4 And this is an email, the defendant talks about
5 reversing a share transfer that he had done earlier. And then
6 he says that Michael Fearnow will sell you stock for a nominal
7 amount that is equal to the common stock in Retrophin and that
8 will be in exchange for this agreement but it is not in the
9 agreement but I'm sending you this email to let you know.

10

11 (Continued on next page.)

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Summation - Smith

5252

1 So the Fearnow shares, the free-trading shares are
2 Count 8 and we'll kind of discuss that as in the last
3 portion, but this is the first time that we kind of see how
4 Kevin Mulleady comes to be part of the Fearnow share group.
5 He agrees to give shares in Retrophin back to the defendant
6 and say that they were reversing an earlier transfer and
7 that he will get the opportunity to buy retrading shares.
8 And so that, he agrees to that transfer on November 30th,
9 2012, keep that date in mind.

10 THE COURT: I'm sorry, I think there's been a
11 request by the jurors to take a break. Do the jurors want
12 to take a lunch break now or just a short break.

13 THE JURY: Short break.

14 THE COURT: All right. Let's take ten minutes.
15 Please don't discuss the case. Thank you.

16 (Jury exits.)

17 (The following matters occurred outside the
18 presence of the jury.)

19 THE COURT: All right. Let's take ten minutes.

20 (Recess taken.)

21 (Jury enters.)

22 (Jury present.)

23 THE COURT: All jurors are present.

24 Please have a seat.

25 Please continue.

Summation - Smith

5253

1 BY MS. SMITH:

2 So before the break we were talking about the
3 backdated share transfers and we walked through the share
4 transfer from Marek Biestek to the defendant, which was
5 originally dated in November when the agreement first
6 appeared and then it was backdated to July 1st of 2012, and
7 then it was backdated again to June 1st of 2012. And when we
8 took the break we were talking about a second share transfer
9 at the exam same time. So that share transfer was first
10 discussed over e-mail on November 29th and then this is the
11 share transfer from Mulleady to the defendant on
12 November 30th. And then the e-mail we were discussing the
13 defendant held Kevin Mulleady that in return for transferring
14 his shares back to the defendant, he'll let him buy some of
15 the Fearnow shares which we'll talk about. But again, the
16 timing is important. The Biestek agreement shows up on
17 November 29th but it was ultimately dated June 1st, 2012, and
18 the Mulleady agreement shows up on November 30th, 2012.

19 And then there's a third backdated agreement
20 between the defendant and Tom Fernandez. And you heard some
21 testimony from Steven Aselage that Tom Fernandez was someone
22 who was given an MSMB and then transitioned to Retrophin and
23 stayed at Retrophin until, I believe it was 2015. So
24 Fernandez is another person that's working at Retrophin and
25 on November 30th as well, he also agreed to a share transfer.

Summation - Smith

5254

1 And he asked the defendant over a text message to
2 memorialize their understanding of the transfer and the
3 defendant says, You will surrender all your stock to me and
4 have 0 and the stock in Retrophin. You will buy from Troy
5 Fearnow for a nominal amount approximately 5 percent of the
6 close merger in the common shares of Retrophin. So he is
7 basically saying the shares you have in Retrophin, transfer
8 them back to me and then I'll let you participate in the
9 Fearnow share purchase.

10 And again that's on November 30th, 2012,

11 And then what we see is that there's an e-mail from
12 Jackson Su sending documents to Corey Massella and, again,
13 during this period Citrin is working on trying to figure out
14 who owns what piece of Retrophin so that when it goes public
15 the shares get transferred to the right people. And this is
16 an e-mail sent on December 3rd, 2012, and all three share
17 transfers are attached and all three share transfers are
18 backdated.

19 So the one between Biestek and the defendant is
20 dated June 1st. The one between Fernandez and the defendant
21 is dated July 1st. And then the one between Mulleady and the
22 defendant is dated July 1st. So all three were actually
23 completed in November 29th, November 30th and they're all
24 backdated. And they all involve those people giving the
25 defendant their shares in Retrophin. And that's

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1 Government's Exhibit 119-25.

2 And then attached to that e-mail that's sent to
3 Citrin, there's actually a fourth share transfer agreement.
4 So those three were people employed by Retrophin giving the
5 defendant back their Retrophin shares and backdating those
6 agreements, and then the fourth agreement that's attached is
7 an agreement from the defendant with MSMB Capital. And that
8 agreement gives shares from the defendant to MSMB Capital and
9 that agreement is also dated July 1st, 2012. And so what
10 happens with these share transfer agreements is that it makes
11 it look like in June and July of 2012 all of these people
12 transferred their shares to the defendant and then he
13 transferred those shares to MSMB Capital. So this is
14 happening late November, early December, but it's making it
15 look like it happened in June and July.

16 And just think about what else is going on in the
17 case in that middle period. So that there's that
18 representation to the SEC in November by the defendant that
19 MSMB Capital has invested in Retrophin. We know that's not
20 true. These agreements make it look like that had happened,
21 that MSMB Capital got shares in Retrophin back in June and
22 July and we know that's not true from the cap tables that
23 we've seen. We know that's not true from the banking
24 account, that there was no investment and they didn't have
25 shares because they weren't showing up on the cap tables. We

Summation - Smith

5256

1 know that on September 5th, 2012, the defendant said to
2 Merrill Lynch MSMB Capital has no assets and then all of a
3 sudden November 29th, November 30th there's this share
4 transfer that makes it look like MSMB Capital got Retrophin
5 shares back in July of 2012, which were then justified or
6 potentially tried to justify to the SEC that statement that's
7 made in November that oh, by the way, MSMB Capital has
8 investments. So that timing is really, really significant
9 and these backdates go back before that representation to the
10 SEC was made. And they actually go back before the Merrill
11 Lynch settlement as well.

12 And so this is a cap table that was revised on
13 December 3rd, 2012. So this the updated list of individuals
14 and entities that had shares in Retrophin after all of these
15 backdated transferred have taken place. And is sent from the
16 defendant to Jackson Su. The defendant is sending an updated
17 cap table. And if you look at the bottom section here you
18 can see that now on July 1st, 2012, it shows that
19 MSMB Capital has shares of Retrophin. And it also shows
20 these transfers back and forth between the defendant, Tom
21 Fernandez and Kevin Mulleady as if they happened in May and
22 June and July of 2012.

23 And then the final Retrophin cap table with is
24 Government's Exhibit 119-27 now has MSMB Capital owning
25 shares of Retrophin. And that is also on December 3rd of

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5257

1 2012. So this cap table that the defendant sent in the prior
2 exhibit is the first time you see it and then it gets
3 incorporated into that final cap table. And then on the
4 final cap table and then the company goes public what happens
5 is you actually get -- the shares of Retrophin get issued to
6 MSMB Capital.

7 So based on that backdated interest, basically --
8 MSMB Capital showing up on a cap table for Retrophin Standard
9 Registrars would be a transfer agent actually transferred and
10 issues shares to MSMB Capital as a result of them being on
11 the cap table at that point. And that kind of accomplishes
12 two goals for the defendant. One, again we had this SEC
13 representation in November and now it looks like MSMB Capital
14 got shares or invested in July of 2012. And it also
15 accomplishes something with respect to the MSMB Capital fraud
16 scheme, which is that there was no money in bank and
17 brokerage accounts, there was no investment in Retrophin, but
18 all of a sudden it looks like MSMB Capital has Retrophin
19 shares and they are issued to MSMB Capital. And the
20 defendant now has something, rather than nothing, that he can
21 give the MSMB Capital investors and say Oh, this is what you
22 your investment was used for. It was used to buy shares in
23 Retrophin. And now I'm giving you those shares and here's
24 your investment back. And so the investors don't have any
25 idea that all of their money was lost in February of 2011.

Summation - Smith

5258

1 There's absolutely no money in MSMB Capital all the way
2 through to December of 2012 and then there's this fraudulent
3 backdated interest in MSMB Capital which let the defendant
4 distribute shares of Retrophin for MSMB Capital as if the
5 MSMB Capital investors had actually invested in Retrophin,
6 which did not happen. So it accomplishes both of those
7 goals. It justifies or tries to justify that statement to
8 the SEC in November and then also gives the defendant
9 something to actually give the MSMB Capital investors after
10 he sends that wind down in September saying you're going to
11 get shares or cash or combination. And this is in some ways
12 similar to the 900,000-dollar note situation. Now this is
13 the defendant faced with a situation where he needs some sort
14 of asset or money to give to somebody so with the
15 900,000-dollar note he made it look like Healthcare had
16 loaned money to Retrophin and then they got the money back
17 from Retrophin to Healthcare and would be able to use that
18 money himself to pay the Merrill Lynch settlement. Here he's
19 making it look as if MSMB Capital actually got shares in July
20 and that let him both kind of back out of his SEC statement
21 in November and give something to the MSMB Capital investors.
22 So that is the reason why this backdated share transfer
23 occurred. And it is the way in which shares actually get
24 distributed to the MSMB Capital investors. Not because they
25 invested, not because any money from MSMB Capital ever went

Summation - Smith

5259

1 into Retrophin, because it didn't. MSMB Capital was defunct,
2 it was done, as of February 2011. But this is the reason
3 that MSMB Capital investors actually get shares showing up on
4 their doorstep in January 2013. And so that kind of
5 accomplishes both purposes with these backdated transfers

6 And so this is a good transition point from kind of
7 the first scheme of Count 7 which is the backdated fraudulent
8 transfers which allowed the defendant to make it look like
9 MSMB Capital had invested in Retrophin and also caused these
10 shares to be issued from Retrophin to MSMB Capital improperly
11 to the second and third pieces of Count 7 which are the
12 settlement and consulting agreements.

13 And so as we go into that I just want the kind of
14 lay the background for where we are with Capital and
15 Healthcare at this point. Both Capital and Healthcare
16 investors believed based on the performance updates that
17 their investments had grown. So if you put in \$100,000 now
18 it's worth \$200,000. So if you get Rosenwald, he said that
19 the returns are 79 percent and Geller was told his returns
20 were 34 percent. So the investors think not only is their
21 money safe, all the money I put in is still there, but it's
22 actually grown and I've gotten this benefit -- I've got more
23 in there than I put in originally and they don't know any
24 different because they're getting these performance updates
25 that are telling them, even though we know from the bank and

Summation - Smith

5260

1 brokerage records that that's not true. So that's kind of
2 the state of affairs in September. And again this is a lie.
3 You know, Capital had no assets, MSMB Healthcare only had the
4 shares of persons in Retrophin which were liquid and they
5 couldn't be sold on the market, and MSMB Healthcare only had
6 about \$2,000 in its bank account. So the difference between
7 what the investors thought had happened, their money is safe
8 and their money has grown and what had actually happened,
9 which is for Capital there is no money and for Healthcare
10 it's all tied up in Retrophin, which at this point is not
11 doing very well. There's a huge difference between what the
12 defendant is saying, which are lies, and what the truth is.
13 But as a result of the lies, the Capital and Healthcare
14 investors think that their investments have done really well.

15 And so again September 2012 wind down, the
16 defendant says we're going to close out these funds, they've
17 done so well, you can get your money back. And so what, you
18 know, they think they're getting back again is their money
19 plus the money they've made. And for MSMB Capital at this
20 point is when that fraudulent interest we just looked at gets
21 created.

22 And for Healthcare, Healthcare actually did invest
23 in Retrophin and so we saw from the share transfer agent,
24 that's Government's Exhibit 125-20, that the defendant takes
25 the MSMB Healthcare money that was invested in Retrophin and

Summation - Smith

5261

1 they divide it up among the investors in Healthcare and those
2 shares get sent out to the investors. So the capital people
3 get Retrophin shares because of the backdated fraudulent
4 interest in Retrophin and Healthcare people get shares based
5 on the \$2.1 million that was moved from Healthcare into
6 Retrophin. So those are the shares that actually get
7 distributed in early 2013.

8 And just to kind of take a moment and think about
9 where Retrophin is, in December of 2012, keep in mind there's
10 no in money left in Capital, there's no money left in
11 Healthcare, Healthcare has invested in Retrophin, but there's
12 in money left in the fund, and Retrophin only had \$11,000 in
13 its bank account. And, in fact, the situation is so bad at
14 Retrophin that the defendant drafted a press release for the
15 end of Retrophin and he told Evan Greebel in an e-mail the
16 situation was dire. And the e-mail that's basically attached
17 is a press release that says. You know what? Retrophin is
18 going under, and it was December 29, 2012. And this actually
19 becomes important in Count 8 as well when we talk about the
20 Fearnow shares so just keep in mind, you know, in December
21 of 2012 Retrophin does not look like it's going to survive.
22 It's going to go under and that is a huge problem for the
23 defendant because he has given Capital and Healthcare
24 investors, there's nothing left and he's giving them
25 Retrophin shares. So if the company blows up, they're going

Summation - Smith

5262

1 to know that there was nothing in either of the funds and
2 Retrophin is not going to be able to save them. So this is
3 kind of the situation at the end of December. And as I said,
4 it's actually very important from Count 8, but it's something
5 to keep in mind here as well.

6 And so what winds up happening is that, like I
7 said, there was a private placement or pipe in February
8 of 2013 and they're actually able to raise money for
9 Retrophin. People invest in Retrophin in the pharmaceutical
10 company and the share price you can see is very low. It's in
11 the 3, \$4 range in this time period. So the company
12 survives, it doesn't go under. And so the stock isn't
13 worthless but it's also not worth that much because it's a
14 brand-new company and the only money they have is the money
15 that they raised in private placement. And it's money for
16 Retrophin. So the idea is people invested in a
17 pharmaceutical company, you know, to make that company do
18 well. They didn't invest in the defendant personally, it was
19 a public company at that point. You heard a lot of testimony
20 about a public company. The shareholders, the people that
21 buy shares and the people that own the public company, not
22 the people who run it, like the defendant. And so at this
23 point in time the people who are investing in Retrophin and
24 the money Retrophin is raising is for the company, and that's
25 kind of important to keep in mind as well. So stock is being

Summation - Smith

5263

1 sold but the share prices are low and the only money that
2 Retrophin has is money that people are putting into it trying
3 to get the company off the ground.

4 And then again, what winds up happening is that the
5 share distribution, the Capital and Healthcare, happen in
6 January 2013 for Capital and I believe February of 2013 for
7 Healthcare. And you heard some testimony about people saying
8 oh, I just -- I was trying to figure out what the defendant
9 for a long time what had happened with my money. I had these
10 performance updates, he said I could take my money out in
11 September and then he disappeared and I couldn't follow up
12 with him and there was a lot of back and forth and I was
13 upset and then one day low and behold in the mail I get a
14 FedEx of shares of Retrophin. And this is the reason why
15 those FedExes were showing up because basically the company
16 went public and it issued all the share on the cap table and
17 MSMB was on there, MSMB Capital was on there because of the
18 backdating and Healthcare was on there because of the
19 investment it had made.

20 So the defendant just sends out those shares to the
21 MSMB Capital and MSMB Healthcare investors and said this
22 is -- this is what's left of the funds, these are your
23 shares.

24 And the investors are very surprised because
25 they've been told in September of 2012 which again is a lie

Summation - Smith

5264

1 that they could get their investments back in cash or stock
2 or combination. And then what shows up in those FedEx
3 envelopes is not what they had been told by the defendant was
4 the value of their investments. So I have two examples here.
5 The first is Sarah Hassan, she invested \$300,000 in
6 MSMB Capital and then she was told that as of July of 2012
7 she had made \$435,000 total, so that was the total amount of
8 money that she had made as a result of the investment.

9 On January 28th the share transfer, you know,
10 MSMB Capital had happened, the shares get distributed, she
11 gets about 58,000 shares and then share price is \$3.90 at
12 that point and so the value of the shares at the time that
13 she got them was about \$227,000, which is very different than
14 435,000.

15 The other problem is those shares were restricted
16 and we heard from Deb Oremland and a lot of the investors
17 themselves that the restriction lasted about a year and so
18 they had the shares but they couldn't actually sell them.
19 And so what winds up happening like Sarah Hassan thinks
20 because of the defendant's lies that she has \$435,000 in this
21 investment and, in fact, what she gets are shares that cannot
22 be sold, that are liquid, that are only worth based on the
23 market about \$227,000.

24 And the other problem that we've heard about is
25 even if you could sell those shares the volume was so low

Summation - Smith

5265

1 there were so few shares outstanding and there wasn't a lot
2 of ability to sell or buy shares at that time that if you
3 tried to sell all of your shares at once you would bring the
4 stock price down even lower.

5 So what she winds up getting is not what she
6 expected and it's not in the form that she expected, she had
7 asked for cash. And it's not remotely what the defendant
8 said her investment was worth. And that's Sarah Hassan, and
9 the same thing happened with the Healthcare investors. So
10 this is Richard Kocher, he invested \$200,000. He was told
11 that he had made \$231,000 based on the defendant's lies, he
12 received 23,500 approximately shares on March 14th when the
13 share price was \$4.75, and so the value of those shares was
14 about \$111,000. So again told that his money had gone up,
15 told that he can get his redemption back in cash which
16 remember Richard Kocher was particularly important, wanted
17 his investment in cash and said the stock in a company that's
18 brand-new and that can't be sold and that's not worth what
19 the defendant said, he was going to get.

20 And so as a result and you heard this from a number
21 of investors the -- the investors reacted not well, as you
22 can imagine, to this development.

23 So Sarah Hassan responds on January 21st, which is
24 actually right before she gets the shares but it's after she
25 tells the defendant she wants her redemption in cash.

Summation - Smith

5266

1 And she says I would like to know why you're
2 refusing to return my cash. If you need money you can ask
3 for it and I will consider it. You already told all
4 investors in MSMB Capital that their funds would be returned
5 in cash unless instructed otherwise in an e-mail dated
6 September 9th, 2012, and she attaches that e-mail again. I
7 had asked for my funds to be returned fully in cash and then
8 she was going to make an investment in Retrophin from there
9 so to get the appropriate paperwork.

10 And then she's also trying to get calculations for
11 what the current value of her investment actually is, and
12 that's Government's Exhibit 103-21. And you see this was a
13 lot of the investors that we heard from. So Schuyler
14 Marshall wants to know when they're going to register the
15 shares. You can tell that he also doesn't understand that
16 this is supposed to be his entire investment coming back. He
17 says You had indicated that the fund would be liquidating and
18 distributing cash for the remaining balance when will that
19 occur and what is the approximate remaining balance. And we
20 get similar statements from David Geller on April 3rd where
21 he says From what I gather over the last few months, it seems
22 like you've put all my fund money into Retrophin at the high
23 valuation. From our conversation last year I informed you
24 that I needed diversification and you told me Retrophin stock
25 would only be a small part of my portfolio. And then finally

Summation - Smith

5267

1 Richard Kocher, who, again, was focused on liquidity and so
2 getting these restricted shares of Retrophin that weren't
3 worth, you know, what his investment was suppose to be was
4 particularly upsetting to him given the side letter that he
5 had and that he thought he could get his money back at any
6 point within a week.

7 He says I expect to get in addition to this
8 insulting untradeable stock at least \$200,000 which only in
9 cash. You should be hearing from them soon. I had damages
10 that have occurred because I've been relying on what you
11 represented as the manager of MSMB. And he says I don't
12 think you've lived up to your fiduciary responsibility. And
13 so these were some of the reactions that the MSMB Capital and
14 Healthcare investors had when they got this stock.

15 And at this point, obviously, the defendant had a
16 choice. He could have stopping lying, come clean, said that,
17 you know, the funds hadn't worked out, that Healthcare was
18 really just used to invest in Retrophin and MSMB Capital had
19 lost everything. But once again he chose a different way
20 out. So instead of owning up to the frauds that were
21 MSMB Capital and MSMB Healthcare, he just engaged in another
22 one to cover himself.

23 He knew that the frustration that the investors
24 were feeling was his fault. He is the one that lied in the
25 performance report. He's the reason they think their

Summation - Smith

5268

1 investments are worth more than they are or in Capital the
2 reason they think they have an investment left at all. And
3 he knew that if he didn't do something they could come after
4 him and after MSMB. As you saw with Lee Yaffe, that's what
5 happened with Alea Capital, the funds blew up and then, you
6 know, George Yaffe is hounding him for years personally for
7 the money back. So he kind of knows what the stakes are at
8 this point and he's got two funds where people are coming
9 after him. And he also knows that Retrophin, which is the
10 public company, is not actually responsible for the investors
11 for anything. I mean, the defendant is the one who lied to
12 the investors about how much their performance is worth and
13 Retrophin didn't have any control over MSMB Healthcare
14 investing in it. And there are two separate legal entities,
15 Retrophin and MSMB Healthcare. And even though they were
16 both run by the defendant, Retrophin wasn't responsible for
17 the lies that were told in connection with MSMB Healthcare.
18 And it certainly wasn't responsible for the lies that were
19 told in connection with MSMB Capital which never invested in
20 it in the first place.

21 And if you think about what a hedge fund is, you
22 know, you invest in a hedge fund and the manager's going to
23 buy a lot of different stock. And the hedge fund will do
24 well and not well depending on what stock or options they buy
25 and how they control the mix. And so, you know, if your

Summation - Smith

5269

1 hedge fund manager buys a lot of Apple and Microsoft and
2 Apple and Microsoft stock doesn't do very well and the hedge
3 fund manager decides to shut the hedge fund down, they might
4 give you back the Apple and Microsoft stock, what's left in
5 hedge fund. But what doesn't happen is that the people
6 invest the hedge fund can't then go to Apple and say, Hey,
7 your company didn't do very well this year so I'm going to
8 sue you because my hedge fund didn't work out and the way
9 that the manager used Apple stock in the hedge fund wasn't to
10 my benefit. They're completely different. If something
11 happens with your hedge fund you get to go after the hedge
12 fund manager. I mean, that's what happened with Alea
13 Capital, you can even see that with the MSMB Capital trading
14 Orex when something goes wrong with MSMB Capital, they go
15 after MSMB Capital, not the underlying stocks that are in the
16 hedge fund. And so the defendant knew that Retrophin didn't
17 owe these investors anything. He knew that he was the one
18 who put the investors in this position and so he -- but he
19 didn't want to take responsibility for what he did, and he
20 didn't want to pay them back in stock. And he had just
21 gotten \$10 million in the February pipes that people had
22 invested in Retrophin. And so what he did was he made a
23 choice to steal that money which had been put into public
24 company to grow the public company and to use it to pay back
25 the investors that he defrauded. And he did it in connection

Summation - Smith

5270

1 with the his co-conspirator Evan Greebel, the attorney, and
2 you saw a lot of the e-mails that went through Agent Braconi
3 between the two of them where it's clear that Evan Greebel is
4 aware of the concerns that everyone knows about the MSMB
5 funds, about the Merrill Lynch settlement and he is working
6 with the defendant, and we'll talk a little bit about that
7 relationship, in order to get the settlement and consulting
8 agreement signed so that the defendant can use money from
9 Retrophin to pay off the defrauded investors. So let's just
10 step through the evidence for the settlement and consulting
11 agreements and why the defendant was able to do that and what
12 was and wasn't told to the Board of Retrophin.

13 So the first step is for the defendant to make the
14 investors think that Retrophin was responsible for the
15 losses. Because then they wouldn't be surprised that
16 Retrophin was paying them back.

17 So he told a bunch of lies about that MSMB Capital
18 had invested in Retrophin and that there was an issue with
19 the merger and that MSMB Healthcare stake had somehow not
20 worked out the way he thought and you can see a bunch of
21 these additional misrepresentations in the e-mails that went
22 back and forth with the investors in 2013.

23 And we saw it, that Agent Braconi that a lot of
24 these e-mails didn't get forwarded to Evan Greebel and they
25 kind of discussed them and figure out who we're going to deal

Summation - Smith

5271

1 with first and who we can put off.

2 So the defendant says that there Sarah Hassan is a
3 fund -- he's talking about MSMB Capital has continued to
4 invest in Retrophin and that is the only investment in the
5 fund at this moment. There is no longer any cash at the fund
6 level. And he also said I wish the fund could not support
7 Retrophin as much as it did. Both realities over the last
8 few months have been very trying. Thankfully we have
9 survived. So he's lying to Sarah Hassan and saying that MSMB
10 Capital invested in Retrophin and that's the only investment
11 left and that's why you got the shares that you got.

12 And he made similar representation to Schuyler
13 Marshall, the fund focused primarily on growing Retrophin and
14 as such this is the only remaining asset. So, again, these
15 are two -- Sarah Hassan and Schuyler Marshall are two MSMB
16 Capital investors to fund in each of these is MSMB Capital
17 and the defendant is continuing to lie and saying the fund
18 focused on growing Retrophin. We all know that's not true.

19 Spencer Spielberg who was an MSMB Healthcare
20 investor and whose investor statements are in evidence, the
21 defendant tells Spencer Spielberg, As you know, the fund, and
22 for Spencer Spielberg that's MSMB Healthcare, is mostly
23 Retrophin shares and those shares have declined in value. I
24 have to take a look at the math but I would expect some cash
25 and some Retrophin stock as far as the redemption goes. And

Summation - Smith

5272

1 that's a lie because there's no money left in MSMB Healthcare
2 and the only thing that MSMB Healthcare ultimately wound up
3 having an investment in is Retrophin. So he's kind of
4 shading the truth here with Mr. Spielberg in saying, oh,
5 there might be some cash there for you and stringing him
6 along when, in fact, there's no cash left in the fund.

7 And then we have David Geller on March 4th he asks
8 Mr. Shkreli, I've been trying to keep up with current events
9 on Retrophin and he says, I guess the most basic answer I'm
10 looking for is how much of my original investment is in the
11 fund and how much is in Retrophin and what is the status of
12 the fund. And the defendant's response is that he's en route
13 to California for a few days and he would be able to give a
14 comprehensive and satisfactory answer soon. And at this
15 point in March of 2013, the defendant knows what the answer
16 is. The answer is there's nothing left in the fund and the
17 shares that you got are the only thing that's left. And so
18 he's putting him off, he's buying himself time to figure out
19 what he's going do next.

20 And what he does next is work with Evan Greebel to
21 figure out the settlement agreement and they space them out
22 over time and the settlement agreements are basically give
23 either money or shares from Retrophin, not from the
24 defendant, not from MSMB Capital, not from MSMB Healthcare,
25 but from Retrophin, the public company, back to these

Summation - Smith

5273

1 defaulted investors. And so there's a series of e-mails that
2 we walked through with Agent Braconi and I'm just going to
3 touch on a couple of them between the defendant and Evan
4 Greebel which show how they're kind of planning these and
5 structuring them and figuring them out. And just keep in
6 mind, there was testimony from both Board members, you know,
7 it's a small Board at this point at Retrophin. It's Aselage,
8 it's Richardson, it's the defendant and then Evan Greebel is
9 the fourth person who's at every single Board meeting.
10 Sometimes there are other people there as well. So the Board
11 is meeting by phone during this point but all four of them
12 are on the phone. During this time period when the
13 settlement agreements are being worked out and the defendant
14 doesn't raise them and Evan Greebel doesn't raise them and
15 we'll see later that there's acknowledgment that they never
16 told the Board about the settlement agreements and you'll
17 also see the timing of the various SEC filings.

18 But as this is going back and forth keep in mind
19 again that the defendant is forwarding all of these
20 complaints to Evan Greebel and they're trying to figure out
21 how they can get the money out of Retrophin to pay back these
22 defrauded investors.

23 So we start with Government's Exhibit 263 which is
24 a discussion between Evan Greebel and the defendant about
25 Lindsay Rosenwald who is an MSMB Capital investor and Evan is

Summation - Smith

5274

1 conveying that, you know, Lindsay Rosenwald, who, as she
2 testified, was very upset to receive these restricted shares
3 that he couldn't do anything with when he thought his
4 investment had grown, has offered to take 80,000, what they
5 call free-trading shares. And again this touches on Count 8
6 a little bit, but the defendant said if you'll accept that
7 offer and then Evan says -- Evan Greebel says that Lindsay
8 wants to get freely-traded stock, are we going to deal with
9 that next?

10 And the defendant responds he can get free-trading
11 stock from a friend, let's discuss today. And what winds up
12 with Lindsay Rosenwald's settlement, as you can see in
13 Count 8, is he winds up getting the Fearnow shares, the share
14 that the defendant controlled are kind of organized from the
15 other Fearnow recipients and given to Lindsay Rosenwald. And
16 this is a discussion in February of 2013 about how to pay off
17 Lindsay Rosenwald because he's upset using those Fearnow
18 shares.

19 So this is Government's Exhibit 252. The bottom
20 e-mail is from the defendant to Evan Greebel and the subject
21 is Sarah Hassan. And Martin says, Sarah equals the same
22 situation as Lindsay. Sarah is also very upset, as we saw,
23 about shares she received. And he says also Fred Hassan's
24 daughter. And Evan Greebel responds I figured, how much do
25 they want? So they're figuring out these different investors

Summation - Smith

5275

1 how unhappy are they, how much Retrophin money and shares do
2 they need to go away.

3 Government's Exhibit 284 in the bottom e-mail Evan
4 Greebel is talking about what do with about Lavelle. Lavelle
5 is an MSMB Healthcare investor that we've heard a little bit
6 about and his investor statements are in evidence. And the
7 defendant's response was Lavelle isn't going anywhere. You
8 know, put this one on the back of the queue, I can deal with
9 this investor later.

10 And then the defendant said Will you do me a favor
11 and e-mail Sarah, talking about Sarah Hassan, I apologize for
12 being on vacation.

13 And then Evan Greebel says, I will e-mail her in
14 the morning with the numbers and structure that she proposed
15 if works for you. And this is a discussion about the
16 settlement agreement. So Evan Greebel is asking the
17 defendant about what Sarah Hassan proposed would work for
18 him. He's not offering his advise about how to go about
19 making sure the defendant is okay with the deal that they're
20 going to use to pay Sarah off.

21 If we look at Government's Exhibit 285 it talks
22 about some additional edits to Sarah Hassan's settlement
23 agreement and if you see that the defendant, who is at the
24 top of the chain, is the one who is actually editing the
25 agreement. He says a couple of minutes it should contemplate

Summation - Smith

5276

1 releasing liability from Retrophin and Retrophin will make a
2 payment. So he's making clear that the company is going to
3 pay Sarah Hassan and he is the one that's actually line
4 editing the agreement.

5 Government's Exhibit 292, it's from April 2013, if
6 you can read the bottom Evan Greebel says What do you want to
7 give David Geller?

8 The defendant said, I don't even remember. And
9 then Evan Greebel responds okay, I'll call and feel him out.

10 And this is a pattern you see in a lot of e-mails.
11 Evan Greebel does a lot of the work to call people and see
12 what they want and talk to them and he always goes back to
13 the defendant. He always asks What do you want to do? What
14 are we going to do? And the defendant gave an instruction,
15 this is how we should handle this person. We should deal
16 with this person first, we should deal with that person
17 later. I want to give this number of shares. It's always
18 the defendant who's making the decision about who gets what.

19 Government's Exhibit 295, it's a discussion about
20 Richard Kocher and again Michael Lavelle, two MSMB Healthcare
21 investors. And Evan Greebel says Do you want me to send him
22 the settlement agreement and the defendant says looks good,
23 send to him. So he's giving the okay to send out an
24 agreement. And then Evan Greebel ask How much stock will he
25 get? So it's the defendant who is deciding what Richard

Summation - Smith

5277

1 Kocher should get -- or what Lavelle should get. And then he
2 says, Also Kocher's lawyer keeps calling me and wants the
3 lawyer -- wants to offer. He said Kocher is instructing him
4 to file papers.

5 And then the defendant says Okay, don't let them
6 sue us, just capitulate Kocher. And the reason the defendant
7 doesn't want to be sued is that if he gets sued it will be
8 clear that there was no money in the fund. If this all comes
9 out, if it can be shown from the bank records and all the
10 other documents you might get in a lawsuit that actually
11 there was no money in Capital and that Healthcare only
12 invested in Retrophin, this whole scheme will unwind. And so
13 there's a real concern as soon as someone says I might sue
14 you, there is then a rush to actually take care of that
15 person first.

16 Because they're worried about the scheme being
17 uncovered.

18 If you look at Government's Exhibit 307, again this
19 is for Schuyler Marshall. And if you look at the bottom the
20 defendant says This is the deal I want, and Evan Greebel
21 confirms that that is a similar settlement issue and the
22 defendant says yes.

23 (Continued on next page.)
24
25

Summation - Smith

5278

1 MS. SMITH: And we saw that Government Exhibit 309
2 is very significant. At the bottom, that email is from David
3 Geller. We saw that the trader at AOL is David Geller's email
4 address. And he says to Evan Greebel, I've been contacting
5 with all correspondence going forward. I have retained
6 counsel to start legal action. As I stated before, I will be
7 contacting the SEC and starting the effort. And in response,
8 Evan Greebel says, FYI, clearly the SEC threat concerns me
9 given these other issues. What do you want me to tell him?
10 And if you remember, in the fall of 2012, the defendant got a
11 subpoena from the SEC telling them that there was an
12 investigation.

13 So he is representing in that investigation by
14 lawyers at Katten, including Evan Greebel, and you can see
15 that in the evidence that we put in, and there's an email
16 later on. And so they're saying, What shall we do, we don't
17 want somebody else going to the SEC? And in response the
18 defendant says, Just tell him we had a delay in the financing
19 and we can't pay him until then. So they're trying to put off
20 David Geller to prevent him to reporting to the SEC as well.

21 And then this is another -- the top part of that
22 chain, so this is a continuation of that email chain. And
23 then they're talking about David Geller as well as Michael
24 Lavelle, and then on July 11th, the defendant says, Make sure
25 you talk David Geller down from the ledge, somewhat important.

Summation - Smith

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1 And this is after he made the threat to go to the SEC.

2 THE COURT: Are the jurors open to having to lunch
3 now?

4 How much more do you have, Ms. Smith?

5 MS. SMITH: Probably another 45 minutes.

6 THE COURT: Are the jurors -- what do you like to do
7 lunch or hang in for 45 minutes?

8 THE JURY: Another 45 minutes.

9 MS. SMITH: That's fine.

10 THE COURT: Thank you, jurors.

11 MS. SMITH: So the next thing that we see then,
12 after all of this email correspondence back and forth, and
13 obviously the investors don't see this back and between the
14 defendant and Evan Greebel, you're the only ones who are
15 seeing this, so they're contacting, and all this is going back
16 and forth and they're getting the order that the defendant and
17 Evan Greebel decide, and the outcome of all this back and
18 forth is the settlement agreements, which you've heard a lot
19 of testimony about.

20 So this is -- I'm just going walk through very
21 quick. Sara Hassan gets a settlement agreement on April 25th,
22 and the settlement agreement basically gives her \$400,000 in
23 cash, and that comes from the company. If you remember, she
24 put in 300, she got an investment that was worth 435, and she
25 got those liquid shares. So the payment is for \$400,000 in

Summation - Smith

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1 cash.

2 And there's the release in the settlement agreement,
3 which releases Retrophin, which is a fraud, because Retrophin
4 doesn't owe Sara Hassan anything. And it also releases the
5 defendant and MSMB entities.

6 And so this is the way in which the defendant gets
7 money out of Retrophin by getting this release in return, as
8 well as for Retrophin and for themselves and the MSMB entities.
9 And the true parties that actually have liability here that
10 could be sued are the defendant and MSMB. Retrophin doesn't
11 owe Sara Hassan anything.

12 And so this is the fraud on the company. It's
13 basically saying, we're signing the settlement agreement
14 because Retrophin is in trouble, when the truth of the matter
15 is that Retrophin was not on the hook for any of this, and
16 this is just a way for the defendant to use the company to pay
17 back the investors. That \$10 million that was raised in
18 February, that money was raised again to make the company, the
19 pharmaceutical company, successful not to pay back people that
20 the defendant owed money to.

21 And you can see again at the end of these
22 agreements, everything for all the entities is all signed by
23 the defendant and the payment actually comes -- the payment to
24 Sara Hassan actually comes from Retrophin.

25 And the same thing with Richard Kocher. He's an

Summation - Smith

5281

1 MSMB Healthcare investor, and that is May 13th for Richard
2 Kocher. And he gets paid a cash payment of \$123,700, and then
3 also shares of common stock, which as we'll see come from the
4 Fearnow shares. And he gets a similar release, again from
5 MSMB Healthcare investment in Retrophin, but that investment
6 was done at the minute that those shares got distributed in
7 the March of 2013. So Retrophin doesn't owe Richard Kocher
8 anything. Richard Kocher is owed money because the defendant
9 lied to him for years about what his investment was worth. So
10 the defendant, or MSMB Healthcare owes Richard Kocher money,
11 not Retrophin. And, again, it's signed all by the defendant
12 and the payment comes from Retrophin. And the stock transfer
13 you can see in the records comes from the Fearnow shares. And
14 you can see it coming from Fearnow and going to Richard Kocher
15 and the remainder goes to the defendant.

16 So there's been a lot of testimony about whether or
17 not the settlement agreement and then the consulting agreement
18 were known to the board of Retrophin. And the evidence shows
19 that the settlement agreements and the consulting agreements
20 were concealed from the board. The settlement and consulting
21 agreements -- the settlement agreements primarily were done by
22 June of 2013.

23 There's one final one with Schuyler Marshall that we
24 looked at, but they were done at this point. The defendant
25 and Evan Greebel negotiated them, signed them, authorized

Summation - Smith

5282

1 payments out of the Retrophin shares. They were fully
2 completed. Some of the payments went out later, but the
3 agreements were all signed.

4 And this is the filing, the public filing for the
5 company on June 13th, 2013, the 2012 10-K. And that's the
6 public filing that discloses, you know, what's been going on
7 at Retrophin. And there's a section called subsequent events.
8 And that section highlights any major transactions that would
9 have happened up to the point of filing, which is June 13th.
10 And as you can see that the settlement agreements, which at
11 this point are all mostly signed, except for Marshall, are not
12 included here.

13 So the defendant didn't disclose them. So whatever
14 board meetings happened up until June 13th, they were not
15 raised, either by the defendant or by Evan Greebel. They're
16 not in the financials, and they are already done by this
17 point. So they weren't actually revealed to the board in any
18 fashion before actually being signed, and in many cases before
19 the money got transferred. And this is a filing that is
20 signed by the defendant on June 13th, 2013.

21 So, again, Lindsay Rosenwald is signed, Kocher's
22 signed, David Lavelle. All the settlement agreements are done
23 at this point.

24 And this is a document that got a lot of attention
25 during the trial, which is the cash flow summary from July of

Summation - Smith

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1 2013, and it's for the first two months, Government
2 Exhibit 122-43.

3 And if you remember, there was this tiny line item
4 that said MSMB settlement and it talks about Spielberg,
5 Hassan, and something called Trachtenberg & Rodes.
6 Trachtenberg & Rodes is the law firm for Richard Kocher,
7 that's actually for the Kocher settlement. And there was a
8 lot of discussion about this document. The most important
9 thing is the date.

10 So, again, this is after the settlement agreements
11 have already been entered into. And there was testimony from
12 both board members that this was not brought to their
13 attention as a specific line item to look at at that call by
14 the defendant, by Evan Greebel, or by Marc Panoff, who is the
15 CFO. It was not discussed. It was not raised as a issue. It
16 was not -- the board was not asked to sign off on it. It was
17 just a line item on a cash flow for the entire company.

18 And Aselage says, talking about this cash flow, that
19 they had raised \$10 million and most was gone and so he was
20 concerned about the company. They weren't able to invest in
21 R&D because there wasn't a lot of money. And that's what he
22 was looking at, not the specific line items which were not
23 explained to him. And certainly weren't explained as, oh,
24 this is the money the defendant owes and the company is going
25 to pay.

1 And this was Mr. Aselage's testimony about that
2 document and that it wasn't disclosed to him or to the board
3 what those settlement agreements were and that he didn't know
4 at the time who these people were.

5 What happens next is that over the summer the
6 auditors for Retrophin discover the settlement agreements.
7 And so they find out that there are a bunch of agreements in
8 the books which have, you know, \$2 million or more going out
9 the door to various individuals to repay debts that are owed
10 by the defendant and the MSMB entities in connection with the
11 investments.

12 And so they kind of read these emails and say,
13 actually Retrophin should never have paid this money, this is
14 not Retrophin responsibilities, these are debts of the
15 defendant and that the MSMB entities are owed.

16 And so this is an email where the CFO is saying, you
17 know, we can't do any more settlement agreements because we
18 have to figure out why the company is even paying this in the
19 first place. And the defendant's response is, Fix the fucking
20 issue. It is not, you know, oh, we should have done things
21 differently. It is not, oh, I'm concerned about it. It is,
22 fix it because I want to be able to do more of this and I have
23 more people to pay off.

24 Government Exhibit 320, which is an email back and
25 forth between the defendant and Evan Greebel. He says in the

Summation - Smith

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1 middle there, the defendant says, Let's work out a resolution
2 ASAP. I have been doing financial statement analysis for 15
3 years and I don't really think the Marcum view makes any
4 sense. And Marcum were the auditors. Please get this settled
5 ASAP. I am promising these guys we'll have a definitive
6 solution Monday, be creative. And Evan says, We may have a
7 decision we are exploring.

8 And you know, as you'll see in the SEC filing, what
9 winds up happening is that the company, it makes the defendant
10 sign notes saying, I actually owe this money and I'm going to
11 pay Retrophin back because Retrophin should never have paid
12 the money for the settlement agreements.

13 And you can see that, again, in Government
14 Exhibit 322, Evan Greebel says, at the bottom the defendant
15 says, There were serious faults with the agreements, the
16 settlement agreements, including lack of board approval. So
17 acknowledging that the board never reviewed the settlement
18 agreements -- approved the settlement agreement. And then he
19 says, Perhaps the second, though, isn't the worst idea. And
20 Evan Greebel responds, The current thinking is let Retrophin
21 pay, get a note from the fund, and if the fund can't fulfill
22 the note, Retrophin will write it off as bad debt.

23 So basically saying we're going to get a note, we're
24 going to say that the fund is going to repay the money that
25 the fund should pay in the first place, and if they don't get

Summation - Smith

5286

1 to, then Retrophin will just write it off, and that's how
2 we're going to deal with the settlement agreements.

3 And then when we get to Schuyler Marshall, who is
4 still in the mix at this point, he's the one person in the mix
5 who has not gotten a settlement agreement, and there's a
6 discussion between the defendant and Martin Shkreli about how
7 to handle him because he hasn't yet been dealt with.

8 And what they wind up doing in the settlement
9 agreement, if you remember, he actually gets two settlement
10 agreements; one for shares and one for money. And the shares
11 agreement is between Schuyler Marshall and the defendant, and
12 the money, the \$300,000, is between the defendant and the
13 company. And so they split the settlement agreement. So they
14 only have to get one part for the auditors and not the other.
15 And so they basically sign two agreements instead of one.

16 And not surprising what winds up happening, those
17 are the two agreements and the note, is that the shares
18 agreement is paid by defendant, the settlement agreement
19 that's the money, is paid by Retrophin. And the share
20 agreement doesn't get signed and the defendant never actually
21 produces the shares. But the agreement for cash does get
22 signed and Retrophin pays the money for the shares. This is
23 the last element, they sneak it through at the last minute.
24 The company winds up paying the money. And the shares which
25 defendant is supposed to pay, don't get paid.

Summation - Smith

5287

1 And you can see the shares he gives the defendant
2 are his own responsibility to pay something decided not to do
3 it. He was only going to do it if the company was going to
4 pay, and that's the payment from Retrophin.

5 And then again, the way the settlement agreements
6 are dealt with is that they disguised as restatement issue.
7 So it's basically said to the board that there were these
8 payments and the defendant should have made them but instead
9 Retrophin made them and there was some confusion and so we're
10 going to restate. We're going to say that the company
11 shouldn't have paid that money. The defendant should have
12 paid that money. And we're just going to kind of fix it as an
13 accounting issue.

14 And what the board members testified to is that they
15 had no understanding what those payments were actually for.
16 They didn't know that the MSMB investors had been defrauded.
17 Richardson himself had no idea that his investment in MSMB
18 Capital had disappeared in February of 2011. And so this was
19 kind of presented by the board -- to the board, excuse me, by
20 the defendant, and Evan Greebel, and the CFO as an accounting
21 issue. And there was never any discussion of the underlying
22 settlement agreements, why they were agreements, why the
23 investors weren't happy, and they never actually saw the
24 settlement agreements. They just kind of dealt with it in the
25 financial statement afterwards.

Summation - Smith

5288

1 And you can see the testimony from the board members
2 Aselage was asked, What discussions, if any, did the board
3 have regarding settlement agreements used to repay MSMB
4 investors the money from Retrophin. And he said, None, there
5 were no discussions and that the board never approved such
6 agreements.

7 He also said that Mr. Greebel kind of gave updates
8 and we talked situations where Retrophin might be sued, and he
9 was asked whether this was kind of raised, was this a
10 situation where the payments were made because Retrophin might
11 have been sued. And Evan Greebel never said that. He didn't
12 say to the board, we have to enter into these agreements
13 because Retrophin might be on the hook. They were just
14 presenting that they were done, and this is an accounting
15 issue and moving on. There was no information given to the
16 board about what was done actually underneath these
17 agreements.

18 And you see the same testimony from Steve
19 Richardson, that the settlement agreements were not approved.
20 No specific reason given why the settlement agreements were
21 entered into in the first place. And that they weren't
22 actually approved by the board or seen by the board at any
23 point. And so that's Richardson's testimony, it's on
24 page 2917.

25 And so what the defendant and Evan Greebel do next

Summation - Smith

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1 is, you know, the settlement agreements were kind of done.
2 The auditors are on to them. They restated the financials.
3 And they meet but they still have a couple of investors that
4 weren't happy. And so what do we do next? We can't do
5 settlement agreements any more. And so they switch. They
6 move from settlement agreements to consulting agreements.

7 And this is Government Exhibit 332. And Evan
8 Greebel says in the middle there, Darren Blanton wants 100,000
9 shares. Because remember Darren Blanton tried to get his
10 money out November of 2011, this is now October 2013. And
11 he's hounding the defendant like, Where's my money? Where's
12 my money?

13 And Evan Greebel says, Where will the hundred
14 thousand come from? If it's from the company, we need to do
15 it in a consulting agreement. And so they're moving from
16 settlement agreements to consulting agreements. And we'll see
17 that that's because they can pretend like these people are
18 actually doing work for the company and pay them off that way
19 instead of having to do it in a settlement agreement for
20 litigation. And the defendant says, Why do we need to do a
21 consulting agreement? And you heard the term settlement.

22 And this is another email about the transition.
23 Evan says, We can call it a settlement agreement, but given
24 Marcum's recent behavior, it may require to be disclosed in
25 the financials. I was trying to prevent that issue.

Summation - Smith

5290

1 So I'm trying to prevent a situation where the
2 auditors says, We have to let people know that we're paying
3 off investors. I want to do it a different way, I want to do
4 it through a consulting agreement. And the defendant says,
5 Maybe we don't need to have Marcum. It doesn't matter if it
6 is disclosed, it is preferable that it is not.

7 And then we have the two sham consulting agreements.
8 And that's Darren Blanton and Lee Yaffe. And we already heard
9 a lot of mention about Darren Blanton, and he put in 1.25
10 million to gets back \$200,000 from Healthcare, not from the
11 Capital, and by October 2013 he's out his money for more than
12 two years and he's trying desperately to get the defendant to
13 pay him back.

14 And so this is his testimony about what he had
15 received in terms of redemption at that point. And he hadn't
16 received any shares, and he hadn't received any money, other
17 than the capital which he just randomly got distributed to him
18 in the FedEx.

19 And he testified that in 2014, at the time that he
20 signed the consulting agreement, he wanted to get his
21 investment back from the defendant. That was what the
22 consulting agreement was for. And that the defendant and Evan
23 Greebel were the ones that proposed the consulting agreement.
24 They didn't discuss it with him, it just showed up. He had
25 gotten settlement agreements originally. And the purpose of

Summation - Smith

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1 it was to get his money back for MSMB Capital.

2 And this is the consulting agreement itself, signed
3 by the defendant and Darren Blanton. And in the description
4 of services, it says, For service and advisers to the company
5 to provide consulting service on strategic and corporate
6 governance matters, and that he was paid 200,000 shares in
7 response.

8 And he testified that the reason he signed the
9 consulting agreement was to get his investment in MSMB Capital
10 and the founder's share because he was involved in founding of
11 Retrophin as well. Why was the consulting agreement involved?
12 And he said that was Martin and Evan Greebel's idea. If it
13 looked like I worked for the company, that way I can get paid.

14 And he testified that he had never discussed with
15 his defendant providing consulting services, and that his
16 understanding of why he was entering into it was to get his
17 funds back. And that's at 1678.

18 And that was the reason he signed the consulting
19 agreement. Not because he wanted to do any work for
20 Retrophin, not because he wanted to be an employee of
21 Retrophin, not that he was going to provide government
22 services, it's because the defendant owed him money for years
23 and he was trying to get it back.

24 And we have the same situation with Lee Yaffe. Lee
25 Yaffe is he different because he's the only one who's not an

Summation - Smith

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1 MSMB investor, he's an Elea investor. And Elea had absolutely
2 no connection to Retrophin. And so there is no reason why
3 Retrophin should be paying back a debt that the defendant owed
4 from Elea Capital.

5 And we heard from Lee Yaffe again that his father
6 invested, that after years of hounding the defendant that he
7 needed to personally pay back \$250,000. And then by September
8 of 2013, the defendant says that he can pay him cash and
9 shares from Retrophin. And he entered into an consulting
10 agreement with Retrophin where Retrophin's going to pay them
11 \$50,000 a month for four months, and then 15,000 shares.

12 And the reason remember the term went from three
13 months to four months, because he wanted a certain amount of
14 money not because he was doing any kind of work or that he
15 need to extended the term of work.

16 And he testified about the promissory note that he
17 had where the defendant owed his father personally \$250,000.
18 That's Government Exhibit 116-8. And that the purpose of the
19 consulting the agreement was to get my money to repay Elea
20 Capital investment. This is the consulting agreement,
21 Government Exhibit 16, which he signed, the defendant signed.
22 And then again the description of services include that he's
23 going to be a consultant on cluster headache drug development.

24 And you heard his testimony, he has no experience in
25 cluster headaches. He has no background in that industry. He

Summation - Smith

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1 has no expertise in cluster headaches. He never said that he
2 wanted to be consultant. He never performed any services. He
3 had two phone calls with the defendant and Marek Biestek for
4 less than five minutes where they discussed cluster headaches
5 in the general sense and that was it. You know, he was not
6 providing services. The purpose of this agreement was for him
7 to get repaid.

8 And the compensation, again, is in the agreement.
9 And that he knew at the time that the shares and the money
10 were coming from Retrophin instead of the defendant, and he
11 testified that that was wrong. That he knew it was a debt
12 that the defendant owed him and that the company did not owe
13 him and that he signed the agreement anyway.

14 And, again, he wasn't qualified by any education or
15 experience to be a consultant, and he never provided any
16 consulting service to Retrophin. This was just a sham. It
17 was a pay to pull money out of Retrophin, a public company, to
18 pay back debts that were owed by the defendant. And, again,
19 the consulting agreements were concealed by the board.

20 So both Aselage and Richardson testified that they
21 were never presented with the consulting agreements, they did
22 not sign off on the consulting agreements, and they weren't
23 told the consulting agreements were being used to repay
24 investors who had been defrauded by the defendant. And that's
25 Richardson's testimony at 2920.

1 And, again, there's a lot of evidence of intent,
2 which I'll going through quickly. Government Exhibit 363.

3 This is an email from November of 2012. The
4 defendant's discussing actually consulting agreement or
5 agreements for somebody else, and it involves stock. And the
6 defendant says, 55K plus a bunch of stock plus a reset on our
7 stock is a lot, considering I would need board approval, it
8 may not work. So he knows back in November of 2012 that he
9 needs board approval if he's going to take money or shares out
10 of company for something like that. And so he's on notice
11 very early on that this is his responsibility.

12 Same thing in Government's Exhibit 370, which is
13 February 2013 that the board needs to approve any grant of
14 shares. That's Evan Greebel telling the defendant that in
15 February 2013. Obviously that's not what Evan Greebel and the
16 defendant do, which is settle, they were both consultants
17 because they both know that's what they are supposed to do.

18 Government Exhibit 255, the defendant -- Evan
19 Greebel is talking to the defendant who wants to buy shares of
20 the company at below market price. And Evan's explaining to
21 the defendant that he was a director and a CEO of a public
22 company, you have a duty and a loyalty in related issues. You
23 are working for the public company, you can't just take the
24 money or shares out of the public company any way you want, it
25 has to be for something that benefits the company. And you

1 can't just act as if you have no responsibility to the
2 company. And the defendant's response in February of 2013 is,
3 "F" that.

4 Government Exhibit 343. This is actually a
5 discussion between the defendant and Evan Greebel in
6 March 2014 about Blanton's consulting agreement. And Evan
7 says at the bottom, Do you want to raise the consulting
8 agreement during the business update with the board? And the
9 defendant responds, No, another time. And they never raise
10 the consulting agreement.

11 So they know they're supposed to, they discuss it.
12 Mr. Greebel and the defendant are discussing it in March of
13 2014. After it's been signed. So it's after the fact. They
14 still know they're supposed to raise it and they don't.

15 We went through this email with David Geller before.
16 About the SEC threat. Again, as we see in Government
17 Exhibit 371, there's a discussion with another lawyer at
18 Katten. This is November 2013. This is a discussion about
19 additional information that the SEC wants about Retrophin's
20 investment -- MSMB's investment in Retrophin. And so as of
21 2013, he knows that this investigation may ultimately pull in
22 what MSMB invested in Retrophin as well.

23 And even knowing that, he signs a document in
24 January of 2014, so after that last email, saying that he is
25 not the subject of any investigation by the SEC.

Summation - Smith

5296

1 And so, again, there was testimony from Richardson
2 that neither the defendant nor Evan Greebel raised the SEC
3 investigation, which would have let the board know that the
4 MSMB investors weren't happy. Because remember Darren Blanton
5 is the one that went to the SEC.

6 And then just very briefly to end here for this
7 count for venue. Marek Biastek transferred shares to the
8 defendant he had backdated while he was a resident in Queens.
9 MSMB Capital investor, Rosenwald, is a resident of Lawrence,
10 New York. He had a settlement agreement, as did MSMB
11 Healthcare investor Spielberg, who was living in Brooklyn at
12 the time. And again interstate wires, or emails, and phone
13 calls, and wire transfers.

14 So those are the -- that's the evidence that's
15 supports Count Seven, which is the Retrophin misappropriation
16 scheme. Again with those three components, the backdated
17 interest, the settlement agreements, the consulting
18 agreements, and I submit that the evidence we walked you
19 through proves beyond a reasonable doubt that the defendant is
20 guilty of the crimes charged in Count Seven.

21 And then the last crime is the Retrophin
22 unrestricted shares scheme, which is related to the Fearnow
23 shares, which we've talked about at length.

24 And just to give you a brief overview of the scheme
25 again, the defendant and the coconspirators, including Evan

1 Greebel and Marek Biestek and others, engaged in the
2 conspiracy to default investors and potential investors in
3 Retrophin by seeking to control the price and trading volume
4 of Retrophin stock.

5 And they sought to do this by concealing his
6 ownership of the Fearnow shares and his control of them. And
7 at the time that they were issued, there was a majority of the
8 free trading shares of the company. So the majority of the
9 shares can actually be transferred and shared and sold and
10 bought, as opposed to the restricted shares, which is what was
11 showing up in the Capital and Healthcare investors. Again,
12 time period is November 2012 to September 2014, and the charge
13 is of securities fraud conspiracy.

14 And, again, these were the -- these are the elements
15 of securities fraud conspiracy. This was in the agreement to
16 commit securities fraud. And the defendant knowingly and
17 intentionally joined that agreement. And, again, because it's
18 securities fraud and conspiracy, we have the overt act, which
19 takes it through the end.

20 And these were just the underlying crimes in
21 securities fraud. And then just in addition, it's important
22 to note that it includes any conduct that is designed to
23 deceive or defraud investors by controlling or artificially
24 affecting the price of securities.

25 And one of the elements of this deception is that

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1 the investor into believing that the prices at which they
2 purchased and sold securities are determined by the natural
3 interplay of supply and demand.

4 So the idea is if you go out and buy Apple stock,
5 you're on the same terms as everybody else buying Apple stock,
6 and there's nobody artificially controlling the price or
7 getting a better deal than what you could get if you went out
8 on the market bought it. That's one of the general ideas of
9 why you want to prevent people from controlling the price or
10 trading the volume of stock, so artificially putting it
11 somewhere that the market wouldn't put it.

12 So if you remember, there were 2.5 million free
13 trading shares that were attached to the Desert Gateway shell,
14 and was first discussed between the defendant and Evan Greebel
15 in November of 2012. It's Government's Exhibit 220.

16 And if you remember from our discussion earlier,
17 Mulleady, Fernandez, and Biestek agreed to accept those shares
18 in return for backing the share transfer agreements to the
19 defendant, and we have those exhibits again. And that's the
20 Fernandez transfer.

21 The defendant was the one who selected who received
22 the free trading shares. And Pierotti testified to that. The
23 defendant was the one who decided who got to purchase these
24 shares in connection with the Desert Gateway reverse merger.

25 And Pierotti was one of the people who was given the

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1 opportunity to purchase the shares. And we saw his purchase
2 agreement. It was between Pierotti and Troy Fearnow, who is
3 someone connected to Desert Gateway. And he bought 400,000 of
4 Desert Gateway, which became Retrophin shares for \$400. And
5 that was an agreement between him and the between Troy
6 Fearnow, and the defendant wasn't actually part of this
7 agreement.

8 And if you remember, you see that Evan Greebel was
9 the one that's kind of coordinating all of the purchases. He
10 informs the defendant that he's got the signed purchase
11 agreements from everybody. That's Government Exhibit 232.

12 And then the two of them figure out how many shares
13 everybody is going to get. And if you remember, there was
14 that initial distribution of shares. Pierotti is supposed to
15 get 400,000, and then 50,000 got held back because they didn't
16 have enough money to pay Troy Fearnow for all the shares, so
17 they held some back in order to kind of make sure that they
18 could get the Desert Gateway shell.

19 So this is the original distribution of shares, and
20 then that's the way that it worked after they held some back.
21 And Pierotti testified about the meeting that he was at with
22 Michael Fearnow in his home and they kind of discussed some of
23 the shares being held back.

24 In this portion, Greebel informs the defendant of
25 the need to make sure that everybody finds that there are not

Summation - Smith

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1 affiliated with company because as you heard Deb Oremland
2 testify, if you're an affiliate of the company, if you work
3 there, if you own more than a certain amount of stock, you
4 actually can't get free trading shares, they're going to be
5 subject to a restriction. So in order to let them be free
6 trading and actually be able to buy and sell them, you can't
7 be an affiliate.

8 And so they have to all affirm that they're not
9 affiliated with Desert Gateway, which becomes Retrophin. So
10 they're not to be employees of Retrophin or working there.
11 And there's a series of emails between Evan Greebel and all
12 the Fearnow shares where they all say, you don't have any
13 connection to Retrophin. And that's get forwarded by Evan to
14 the defendant so that he knows this is what everybody's saying
15 as well.

16 And Tim Pierotti's email is here. As you remember,
17 at this point Tim Pierotti had stopped working for the
18 defendant. He had never worked at Retrophin. He worked at
19 MSMB Consumer. And then he had this termination agreement
20 where he basically said, I'm no longer working for MSMB
21 Healthcare, and he was going to go off and do that Garreco,
22 that kind of dental gypsum business. He was going to go do
23 something else. And the defendant had said, you know, don't
24 come into the office, we're turning into Retrophin, and he
25 wasn't connected to Retrophin, and he had stopped working in

Summation - Smith

5301

1 any way with the defendant at this point. And, again, he
2 wasn't considered working for Retrophin because he didn't have
3 the background and he wasn't interested.

4 Here are the other people who agree that they're not
5 affiliates. Marek Biestek. Andrew Vaino. And we know that
6 Andrew Vaino and Steve Aselage is actually someone who was in
7 the San Diego office of Retrophin at the time. So we're going
8 to look at some of that. But Andrew Vaino, Thomas Fernandez
9 is also affirmed that he's not an affiliate of Desert Gateway,
10 which, again, becomes Retrophin. And Kevin Mulleady
11 represents that he's not.

12 And then Greebel provided that information to the
13 law firm that's preparing the opinion so when the shares get
14 distributed by email, by testified they need some sort of
15 order. And the order that they get says that none of the
16 people who are receiving the shares are affiliated with Desert
17 Gateway, or Retrophin and, therefore, the shares can be free
18 trading instead of the restricted shares that other people
19 get.

20 And that's the legal opinion that gets sent, and
21 that's the section where they say that none of these people
22 are affiliated with Retrophin. And at the bottom it has the
23 distribution of the Fearnow shares as well.

24 And then again, some of the people who were
25 affirming that they had nothing to with Desert Gateway or

Summation - Smith

5302

1 Retrophin were, in fact, working there at the time.

2 So Mulleady was working for Retrophin, when he
3 received Fearnow shares. The termination date was -- he
4 didn't Retrophin until January of 2013. So he get the Fearnow
5 shares, he's an affiliate.

6 Vaino was a Retrophin employee through 2015. So
7 when he gets the Fearnow shares, he's an affiliate.

8 Fernandez was a Retrophin employee through 2015.
9 When he gets the Fearnow shares, he's also an affiliate.

10 And Ron Tilles was a consultant for Retrophin, so
11 when he got shares of Retrophin, he was also considered an
12 affiliate.

13 You can see there's a discussion between Evan
14 Greebel and the defendant about where the Fearnow shares will
15 be sent, and Evan suggested they be sent all to MSMB and the
16 defendant says, No. Because MSMB is sharing the same office
17 space as Retrophin, and they should be sent to the individuals
18 because nobody should know that these people are actually
19 working for Retrophin at the time.

20 And as you see, the standard register distributed
21 that they're not shared to the individuals, some of them were
22 actually sent to Evan Greebel. But including Edmond Sullivan,
23 who was living in Brooklyn at the time, and then also Marek
24 Biestek, who's living in East Rockaway.

25 So they get the opinion that none of these people

Summation - Smith

5303

1 are employees, they distribute the shares, all the shares that
2 can be bought and sold.

3 And then the defendant sends this email, which is
4 Government Exhibit 242, and he sends it to the Fearnow share
5 recipients and he says, Effectively immediately, I'm the CEO
6 of Retrophin, and MSMB Capital, as you know, is liquidating,
7 and basically says none of these people are employees of
8 Retrophin. I decree, none of these people are employees of
9 Retrophin. They shouldn't be in the office, they're not
10 employees. And the reason he's doing this is because he knows
11 they just all affirmed that they're not affiliates, and so
12 they can't be working for Retrophin. So this email he sends
13 out, kind of wink, wink, nod, nod, nobody here works for
14 Retrophin. And that's Government Exhibit 242.

15 And you can see that there's discussion between Evan
16 Greebel and the defendant about this. Evan Greebel says in
17 December of 2012, per your prior instructions, Kevin is not an
18 employee or consultant of Retrophin. And we just saw earlier,
19 in fact, he was an employee of Retrophin until January of
20 2013. So this is just cover.

21 You can see in Government Exhibit 368, this is a
22 discussion between Kevin Mulleady and the defendant. Kevin
23 Mulleady on the left, the defendant is talking to him about
24 work that he wants him do for the Retrophin website. And in
25 response Kevin Mulleady says, You know, I'm going to do it, I

Summation - Smith

5304

1 just got up this new email address, which is a non-Retrophin
2 email address. And he's sitting at home because he's waiting
3 for FedEx. The FedEx are the Fearnow shares we just saw.
4 Those shares, if you look at the actual labels were sent out
5 on December 14th. This is December 16th. And he's saying,
6 I'm staying home with my Fearnow shares. The defendant is
7 talking about working on something for Retrophin. And then
8 the defendant says, Come into the office. Like come in and
9 come to work.

10 And so there's this whole fiction. He's giving this
11 new email address. He's sitting at home waiting for the
12 Fearnow shares, and the defendant wants him to come in and
13 work for Retrophin.

14 And he also wanted Pierotti to come into the office.
15 Remember his testimony, Pierotti was -- had originally said to
16 Pierotti, You're not going working for me any more, you do
17 your own thing, you know, this office is for Retrophin. Once
18 he gets the Fearnow shares, he wants Pierotti to come into the
19 office as well. Even though Pierotti says he also not
20 affiliated with the company.

21 And then he gives all the Fearnow share recipients
22 updates about the office hours. You know, so it's this -- you
23 know, on the one hand you have nothing to do the company, on
24 the other hand I want you to come into office, I'm telling you
25 what office hours are, I want to you do work for Retrophin.

Summation - Smith

5305

1 And, you know, there's this whole disclosure issue,
2 because the reason the defendant wants these people to come
3 into the office is because he wants to control the shares.
4 And there's -- we'll get to that at the last piece which is
5 coming up, and actually why he wants to control the shares and
6 how he tries to do it.

7 But you will see that the Fearnow shares then get
8 used to pay off various settlement agreements, and the
9 defendant tries to control who can sell them and what they can
10 do with them, and he exercises control over many of those
11 Fearnow shares. And in the filing that he makes right after
12 the merger, he does not disclose that he is, in fact,
13 controlling the shares.

14 So he puts them in other people's names. He wants
15 to control them. He wants them to keep trading because he
16 wants people to buy and sell them when he wants them to. But
17 he doesn't actually take responsibility for controlling them.

18 And so he discusses the 13D filing with Greebel,
19 which is the filing that Deb Oremland says, We have to
20 disclose all the shares that you control. And then he doesn't
21 actually disclose the shares. He discloses his own shares,
22 and he discloses MSMB Capital, and MSMB Healthcare, but not
23 the Fearnow shares.

24 And so he has 3.3 million shares of his own, or MSMB
25 Capital and Healthcare, which represents 40 percent of the

Summation - Smith

5306

1 company. And those \$2.5 million shares, remember they're
2 about 8.8 outstanding, would put him way in the majority of,
3 you know, the Retrophin, controlling Retrophin. And they're
4 not disclosed.

5 And then you can see over the next few months how he
6 actually exercises control over those shares, and he moves
7 them around, and you can see all these initial decisions; LR,
8 Lindsay Rosenwald, gets 80,000 shares from MB and ES, and just
9 he kind of moves them.

10 And I'll going through this quickly, but there's a
11 series of emails where he's the one saying, You take your
12 Fearnow shares and give them to do this person, you take your
13 Fearnow shares and give them to that person. That is control
14 of those shares, and he has not disclosed that, as he's
15 required to.

16 So, again, he's directing them to fulfill different
17 obligations, settlement agreements. These are additional
18 personal obligations. You know, shares going to LR, going to
19 DS, moving them around from different people that are supposed
20 to own them, and instead he's directing where those shares go.

21 Same thing, this is a listing in December of 2013,
22 approved the shares from which portion.

23 So Kocher got shares that had been with Andy Vaino.
24 Lindsay Rosenwald got shares from Ed Sullivan and Marek. So
25 those shares are in other people's names, and he's directing

Summation - Smith

5307

1 who gets them, and that's exercising control over them and
2 that needs to be disclosed and it wasn't.

3 And this is the distribution that we saw with Deb
4 Oremland and, again, you can see that the free trading shares
5 represent 80 percent of the shares that can actually be bought
6 and sold at this time. And so if you're controlling
7 80 percent of the shares that can be bought and sold, you can
8 kind of decide when you're going to buy and sell and how much,
9 and in that way you control how many shares are being bought
10 and sold, the volume, and then also the price. Because you
11 are the one that's out there telling people to buy and sell at
12 certain prices.

13 And that's the way that the control is used to
14 defraud Retrophin, because the stock is not being bought and
15 sold on the free market for what people think it's actually
16 worth. There's control being exercised and people are trading
17 them, or buying and selling them for a certain price or a
18 certain volume in order to control the ultimate share price of
19 Retrophin.

20 And, again, if you remember at this point, the
21 defendant needs Retrophin to have a decent share price because
22 he's giving out the shares to Capital and Healthcare investors
23 and he needs them to be worth something.

24 As you remember, there's this attempt to control the
25 Scottrade accounts that are set up. He says everyone who got

Summation - Smith

5308

1 Fearnow shares, everyone should get an account in Scottrade,
2 set it up, and then tell me what you're buying and selling
3 every single day so I can see how the shares of Retrophin are
4 being sold and for what price and how much.

5 And this is an email to all the Fearnow shares with
6 most of them saying set up these accounts. And Pierotti
7 talked about that it was the defendant's idea to set these
8 accounts up and to keep track of the trading. And it was
9 discussed between Marek and Evan Greebel as well.

10 (Continued on next page.)

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Summation - Smith

5309

1 MS. SMITH: And the defendant is, in this period,
2 encouraging people to buy and sell stock, to increase the
3 volume or to set a particular price. So he asked Darren
4 Blanton to buy stock and he suggests that the Fearnow share
5 recipients should buy and sell stock between them to increase
6 the volume. And he encourages people again to increase
7 trading volume, this is Government Exhibit 120-14. One of my
8 priorities in the future is increasing the trading volume of
9 our stock.

10 And you can see on this chart from Deb Oremland, the
11 green are the Fearnow share recipients who are not Tim
12 Pierotti. And they are in the fact out in the market buying
13 and selling stock in this time period, as the defendant has
14 directed. You can also see there are a particular days she
15 talked about where the defendant is out there. So on
16 December 17th he's the only one buying stock and so he's able
17 to set the price for the stock for the day and you can see
18 that it's particularly high at that point. Then, again, this
19 is just as important because at this point, which is the far
20 left of the graph, the share price in is red and the volume is
21 the blue and there is not a lot of volume, so there are not a
22 lot people who are buying and selling or who can buy and sell
23 and so as a result what the defendant is doing is going to
24 have a big impact on the volume and the price of the shares.

25 Then the last piece of this is the attempt to

Summation - Smith

5310

1 control Pierotti stock. So Pierotti doesn't follow the rules,
2 he's not working for Retrophin, he doesn't want to come into
3 the office. He doesn't want to tell the defendant when he's
4 buying and selling. He's worried about being an insider and
5 getting insider information and he's uncomfortable with the
6 entire situation. And so he goes off on his own and he starts
7 selling the Fearnow stock and this enrages the defendant
8 because he thought he had given it to people who were going to
9 do with the stock what he wanted, and Pierotti isn't playing
10 by the rules. So he goes after Pierotti. First he tries to
11 figure out who is actually selling the stock. He has
12 conversations with Evan Greebel, you know, who's out there
13 selling? Like, I know who has all the shares, who is out
14 there selling? And there is a bunch of conversations about
15 who is it and trying to figure it out.

16 He concludes on December 29th that it might be Tim
17 selling, because he's talked to everyone else, he's kind of
18 figured out who is left, Tim must be selling his stock.

19 And he says to Evan Greebel, I want to send him an
20 email, you know, I want to do something to tell him to stop
21 selling or give me back the shares. And Evan Greebel says to
22 him, leave it alone, you are an affiliate and it will only
23 create problems. So he's the telling defendant not to try and
24 go after Pierotti's shares. And what does the defendant do?
25 He doesn't listen to Evan Greebel, he goes and does what he

Summation - Smith

5311

1 wants, which is he sends a rant back to Pierotti about how he
2 promised to work for Retrophin and he's absconded with the
3 shares and he wants the shares back. And it's in the same
4 time period at the end of December 2012.

5 So there is this email and then Pierotti testified
6 that there was a phone conversation where the defendant
7 screamed at him and told him to give back the shares. And
8 then there was the whole over the wall set of emails. And the
9 defendant consults with Greebel about whether or not he should
10 try and bring Tim Pierotti over the wall. Basically what that
11 means is, if you give someone inside information about a
12 company, like Apple is going to buy another company, once you
13 have that information, you can't sell because you don't
14 want -- you can't sell on information that's not public. So
15 what he wants to try to do is give Tim Pierotti, force him to
16 get information about Retrophin that is not public so he will
17 stop selling the stock. That is what the over the wall email
18 is about.

19 He discusses it with Evan Greebel who says that he
20 never heard of putting someone over the wall with inside
21 information over email. And they are discussing whether or
22 not they should put that in the title of the email and if it's
23 in the title whether Pierotti will actually delete the email
24 or he'll read it and once he reads it he can't sell the stock.

25 And you can see that Greebel is also warning him not

1 to make it clear kind of who the email is going to. The email
2 is going to the Fearnow share recipients. So he's trying to
3 keep them, the people who have the free trading shares from
4 selling and, particularly, Tim Pierotti because he's unhappy
5 about the share price at this point.

6 Greebel says, I don't know what happens if he just
7 deletes it. Even if it's in the header there's some -- in the
8 subject line if there's some inside information if he just
9 deletes the email I don't know if he's actually over the wall.
10 And if you remember when Tim Pierotti testified, there was a
11 lot of cross-examination on why did he delete the email, it's
12 exactly what Evan Greebel says he's going to do. He doesn't
13 want inside information, he wants to be able to share and so
14 he doesn't want to be brought over the wall. And so the
15 defendant sends the over the wall email anyway, after the
16 discussion with Greebel to keep Pierotti from selling, and
17 then Mulleady sends another email to the group discouraging
18 them from selling. So he's also kind of jumping on what the
19 defendant is doing and trying to prevent Tim Pierotti from
20 selling his shares.

21 And as we know, he doesn't stop. And he says that
22 he deletes the email because he doesn't want to have inside
23 information and not be able to sell his shares.

24 And what happens next is they discuss suing Pierotti
25 for selling the shares. Greebel says it's very risky given

Summation - Smith

5313

1 what your agreement was, you could be opening a much bigger
2 can of worms. Because he knows that Pierotti, you know, wink,
3 wink, nod, nod is probably going to do with those shares what
4 the defendant says. And, technically, Pierotti is not, you
5 know, beholden to the defendant, he can do what he wants. The
6 defendant's control has not been disclosed and so he's
7 concerned that if they sue Pierotti, this whole kind of
8 arrangement where he controls those shares is going to come to
9 light. So he says, I don't think threatening to sue Tim
10 Pierotti is a good idea.

11 Of course, the defendant doesn't listen to him. He
12 threatens it anyway, and we talked about this email with
13 Mr. Pierotti. And after this email is when the defendant gets
14 really frustrated and upset and angry with Tim Pierotti.
15 Because despite sending the over the wall email, despite
16 threatening to sue him, Tim Pierotti is still selling his
17 shares. And this is when the defendant threatens Pierotti's
18 wife to get him to return the free trade shares. This is his
19 attempt to control those shares. It's not enough to threaten
20 to sue, it's not enough to give him inside information, he has
21 to go and threaten Tim Pierotti's wife because he wants that
22 badly to control those shares.

23 And, as you remember, it includes threats about
24 making Tim Pierotti's wife homeless and his children homeless
25 and it includes, you know, this discussion of how he's frozen

Summation - Smith

5314

1 Tim Pierotti's bank account and the effort, the lengths at
2 which he is going to try and get those shares back and control
3 them, because at this point, again, there aren't that many
4 free trading shares out there. And the more shares he
5 controls, the more that he can control the price and the
6 volume of those shares and make sure that Retrophin's stock
7 price is at a decent level.

8 And if you remember, there are emails after this, he
9 actually goes ahead and has Evan Greebel, the Katten law firm
10 file a lawsuit against Pierotti. That's how badly he wants to
11 the shares back. He says, I expect you and Howard to bury
12 Tim. That's in March 2015.

13 Then the last exercise of control over these shares
14 was, remember those 50,000 shares that were held back, those
15 were supposed to go to Pierotti because the agreement was
16 between Troy Fearnow and Tim Pierotti, not the defendant. And
17 what happened is when Pierotti tries to get those shares, the
18 defendant prevents it. Even though that agreement has nothing
19 to do with the defendant, he is exercising control over those
20 50,000 shares. And there's an email from Michael Fearnow to
21 Martin Shkreli in December 2013 saying that Tim, Tim Pierotti
22 is asking for his stock. And the defendant forwards that to
23 Evan Greebel. And as Tim Pierotti testified, he never
24 actually got those 50,000 shares. In the settlement agreement
25 with Retrophin over the lawsuit, he agrees not to go after

Summation - Smith

5315

1 them because the defendant has effectively blocked him from
2 getting those shares. And they settle on those shares.

3 And again, overt acts, which is the last piece.

4 There are a number of emails that are charged including one of
5 the affiliate emails that was sent by Evan Greebel to Marek
6 Biestek. And then again another overt act that's been charged
7 in an email between the defendant and Evan Greebel, they're
8 talking about using the Fearnow shares for Kocher's settlement
9 agreement, which they do, and Greebel is asking him, well,
10 whose shares do I take? Whose shares should I take to use to
11 settle this agreement, because we control all of them so who
12 do you want me to take them from? The defendant's response is
13 take from anyone, I don't care, do the math. And that is the
14 evidence on the final securities fraud conspiracy count for
15 Count Eight.

16 And I really appreciate everybody's patience, I know
17 this was a long presentation, it's been a long trial. The
18 evidence comes in piece by piece it is not all at once and it
19 doesn't come in order, so this is our opportunity to kind of
20 put everything together for you and show you how all the
21 evidence fits in with the law that you're going to hear from
22 Judge Matsumoto and how we have shown that the defendant is
23 guilty beyond a reasonable doubt on all eight of the crimes
24 with which he's been charged. Thank you.

25 THE COURT: All right, thank you.

Proceedings

5316

1 I think at this time we will give the jurors their
2 lunch break. Please return to the jury room, if you can. Is
3 one hour sufficient? So let's say 2:50. If you can get there
4 a little earlier even better.

5 Please don't discuss the case.

6 (Jury exits courtroom.)

7 THE COURT: All right, so let's take one hour and
8 resume.

9 MR. AGNIFILO: Your Honor, we have a concern, during
10 the government's summation they seemed to define the term
11 affiliate. I think they defined it inaccurately and I think
12 they defined it as someone who can be an employee of a company
13 or associated with a company. It's a term with a very
14 specific definition and I think that we're going to need Your
15 Honor to give that definition to the jury because it's simply
16 not just an employee of the company. An affiliate is a person
17 such as executive officer, a director, or a large shareholder
18 in a relationship of control with the issuer.

19 So maybe what we can do, since we're going to have
20 some time before the jury comes back, I can get Your Honor a
21 more precise, well, better researched definition of the term
22 affiliate, but I know it's very much inconsistent with what
23 the government just told the jury it was.

24 THE COURT: Why don't you consult, trade your
25 authorities and I will straighten it out. Why don't we come

Proceedings

5317

1 back then at 2:45, 2:40 so I can come up to speed on where you
2 stand.

3 MR. AGNIFILO: Very good, Judge. Thank you.

4 THE COURT: Thank you.

5 (Luncheon recess: 1:50 p.m.)

6 (Continued on the next page.)

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Proceedings

5318

1 A F T E R N O O N S E S S I O N

2 (In open court; jury not present.)

3 THE COURT: Have a seat.

4 MR. AGNIFILO: Judge --

5 THE COURT: Yes.

6 MR. AGNIFILO: -- we've been talking and rather than
7 taking something kind of out of context, we're going to agree
8 or come as close as possible to agreeing on a jury instruction
9 that Your Honor can incorporate in the general instructions --

10 THE COURT: Okay.

11 MR. AGNIFILO: -- on affiliates and that it's an
12 issue of fact for the jury to decide based on certain language
13 that we can probably come close to agreeing on by the end of
14 the day.

15 THE COURT: All right. I just think that perhaps
16 you seem to be reading maybe a definition that I wasn't
17 certain was applicable, I think that's one of the issues
18 whether it is the 1934 Act or --

19 MR. AGNIFILO: We have -- what we can do, Judge, is
20 there are a couple of -- there seems to be a lot of confusion
21 about the precise definition and there's some changes in the
22 SEC, but what we can do after, I think when we finished with
23 the summations for today, we can probably come close to
24 agreeing on some language --

25 MS. KASULIS: Yes.

Proceedings

5319

1 MR. AGNIFILO: -- that Your Honor can maybe
2 incorporate into the general charge. So we don't have to do a
3 specific charge at this point.

4 THE COURT: Okay.

5 MR. BRAFMAN: Judge, just on scheduling, the
6 government's summation was a little bit longer than everyone
7 expected, I'm not being critical I'm just stating a fact, and
8 it's now 10 to three. I'm going to try and finish today but
9 I'll know by the break where I'm up to and then maybe by the
10 break the Court can ask the jurors whether they would be
11 willing to sit today a little bit past 5:30 or whether they
12 need to leave at 5:30, it's up to you. I'll let you know by
13 the break how far I've come.

14 THE COURT: All right.

15 MR. BRAFMAN: I'd like to really finish today if
16 possible.

17 THE COURT: I understand. I would like to just keep
18 the case moving as well. It may be difficult for me
19 personally to stay past 5:30, but I will certainly think about
20 it --

21 MR. BRAFMAN: If they don't want to, I don't want to
22 keep them then.

23 THE COURT: -- and stretch to do that. Okay.

24 MR. BRAFMAN: Thank you.

25 THE COURT: Are all the jurors back?

Proceedings

5320

1 Do you know how soon you'll be able to discuss and
2 come to some sort of proposal regarding the definition of an
3 affiliate? Because we will have to incorporate it, we'll have
4 to clear it with you.

5 MR. AGNIFILO: I need maybe five or 10 minutes
6 after, we're not doing anything else, maybe we can even do it
7 over the afternoon break.

8 THE COURT: Maybe we should adjourn at five so we
9 can straighten that out, we'll see.

10 MS. KASULIS: We can talk about it over the break,
11 Your Honor. I don't anticipate it being a big issue. I think
12 we can probably work it out.

13 THE COURT: All right.

14 Are you using the Elmo or the PowerPoint?

15 MR. BRAFMAN: I'm going to use the Elmo.

16 (Jury enters courtroom.)

17 THE COURT: All jurors are present. Please have a
18 seat everybody.

19 Members of the jury you will now hear from the
20 defense. Mr. Brafman, you may proceed.

21 BY MR. BRAFMAN:

22 Thank you, Judge. May it please the Court. It's
23 been a privilege to appear in this courtroom and I appreciate
24 the courtesies you've extended to counsel. My whole team says
25 that, thank you, Your Honor.

Proceedings

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1 And for you, ladies and gentlemen, I don't know how
2 to say this, I work here, without you I'd have no job and with
3 you at least I have decent citizens to speak to and hopefully
4 convince. But thank you for your service. This has not been
5 an easy case, it's been longer than usual jury service and you
6 have given of your time and you are entitled to the thanks of
7 all of the parties, because without you we don't do anything
8 here, we just look at each other and wait. So thank you for
9 showing up and thank you.

10 As a trial lawyer, jurors always ask me how to get
11 out of jury duty and I always say the same thing, don't get
12 out of jury duty. Agree to serve. It's an obligation that
13 you should take very seriously because every once in a while,
14 like in this case, a man, I suggest, who is presumed to be
15 innocent and who from the evidence I think you should conclude
16 is innocent, needs people like you to help his lawyer save
17 him. So thank you for showing up and I appreciate the fact
18 that you came every day and you paid attention and I need your
19 help to try and save Martin.

20 A couple of weeks ago -- and I know this passed very
21 quickly so I want to just sort of bring it back -- a woman was
22 asked to identify Martin Shkreli and she volunteered that he
23 was sitting next to the lawyer with the gray hair. Remember
24 that? And I said, thank you very much, you could have said
25 green tie or -- she said gray hair. When this trial started

1 my hair was not gray.

2 This trial has been a difficult voyage for all of
3 us. And it's a difficult voyage because it's a complicated
4 case and that doesn't mean that you have to vote to convict
5 Mr. Shkreli because the government worked so very hard. You
6 just heard an almost four-hour summation by a very bright,
7 eloquent, well trained, hard working Assistant United States
8 Attorney who gave you a very, very thorough summation. And
9 it's very good. Except for one thing, I have one criticism.
10 It could have been written before the trial. Because it
11 ignored a lot of what you saw. It ignored a lot of what
12 happened in this courtroom. It completely ignored the
13 cross-examination of every single government witness, which I
14 submit, added important facts to the trial. And you can't do
15 that. I'm not offended, but you should be. You shouldn't
16 take it personally, but you can't ignore the
17 cross-examination.

18 Her honor will charge you at some point tomorrow
19 about the instructions and one of the instructions in terms of
20 how do you decide credibility, is by looking at what a witness
21 said on direct examination and comparing it to what that
22 witness said on cross-examination. And if there are
23 substantial distinctions, that is a factor that you may
24 consider in determining whether a witness is telling you the
25 truth, whether that person should or should not be believed.

1 So you cannot ignore what is the messy stuff of a trial. You
2 cannot ignore what happens when a witness comes into the
3 courtroom and says something and then on cross-examination is
4 forced to essentially admit that what they said on direct
5 examination was either inaccurate, or a lie, or a mistake, or
6 they fill out the narrative so that the impression you got on
7 direct examination is so different once the witness finishes.

8 It's part of the process. That's why we have
9 trials. What we do counts. And it can't be ignored in the
10 government's summation as if all you need to do is look at a
11 couple of emails and look at a couple of charts and conclude
12 beyond a reasonable doubt that Martin Shkreli is guilty. You
13 cannot ignore the witness testimony.

14 The government hand-picked the witnesses they chose
15 to call and we'll discuss how many people they ignored and did
16 not call for obvious reasons, and we'll get to that in a
17 minute. But you cannot ignore three and a half or four weeks
18 of testimony that, I submit most respectfully, each of you
19 listened to, took notes about and carefully considered when
20 you decided whether or not that witness was or was not telling
21 the whole truth and nothing but the truth.

22 So I had a burning question since I began in this
23 case and it's a question I'm going to pose to you. If Martin
24 Shkreli really wanted to defraud the people at MSMB, why
25 didn't he do it? Why didn't he just defraud them? Take their

1 money in MSMB Capital, he bets wrong on the Orex trade, the
2 private placement memorandum basically insulates him because
3 he is the general partner, he can pick the stock he wants to
4 invest in and if it's not good they have no legal -- they have
5 no legal claim. It says it in the private placement
6 memorandum, that the general partner has the discretion to do
7 it. He can suspend withdrawals, he can suspend redemptions.
8 It's in the private placement memorandum that they each swore
9 that they read and many of them did not. You can't ignore the
10 fact that most of the people who testified, testified that
11 they never read the private placement memorandum. What's that
12 all about? You can't just toss it aside as if it didn't
13 happen in this case. So if Martin Shkreli wanted to defraud
14 these people, why didn't he defraud them? Why did he sleep in
15 his office for two years in a sleeping bag to make Retrophin a
16 dazzling success? And we'll talk about Retrophin in a minute.

17 But it's all Martin Shkreli. Martin Shkreli is MSMB
18 Capital, Martin Shkreli is MSMB Healthcare, Martin Shkreli is
19 Retrophin. There would be no Retrophin without his genius and
20 without his effort and without his intensity to see to it that
21 that company becomes an extraordinary success. Steve
22 Richardson and Steve Aselage did nothing to make Retrophin a
23 success. But when it became a success they got rid of him.
24 And we'll walk you through it and we'll walk you through their
25 testimony, the direct and the cross. Because the cross

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1 counts. Cross-examination has been considered to be the
2 engine of truth because it helps flesh out the narrative.

3 So if Martin Shkreli wanted to defraud these people,
4 why didn't he just take a hike and why didn't he take their
5 money? They all deposit their money, they have no idea what
6 he's doing with it. All of the big hedge fund witnesses told
7 you the general partner doesn't have to call you and say I'm
8 buying Apple, I'm buying Orex. So he screwed up. He's not
9 charged with making an illegal Orex trade.

10 All of the people in this case told you when you
11 play on that level in the market it's basically sophisticated
12 gambling. You might hit a home run, you might strike out. So
13 the Orex trade was a bad trade, but that wasn't a crime. Why
14 didn't he just walk away? I'm sorry, you were all rich, you
15 invested in a hedge fund. Hedge funds don't have liquidity.
16 Read the documents you signed. Why didn't he just walk away?

17 So when you consider his intent, the Court will also
18 instruct you on the issue of good faith. Because good faith
19 can, in this case, be a complete defense to every single one
20 of the charges if Martin Shkreli believed that what he was
21 doing was truthful and accurate and he was a visionary, as
22 Steve Aselage described him.

23 Now some investors got ignored by Mr. Shkreli
24 sometimes for days and you can see the emails. And sometimes
25 he would say I'm crazy, busy, nuts, I'll get back to you and

Proceedings

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1 some people took it better than others. He's not charged with
2 aggravation. It's not a crime to aggravate someone. If
3 you're stalling because you're building a company so you can
4 repay them, that's not evidence of a fraud. I'm crazy, busy,
5 nuts. What's he doing? You don't have him on the beach, you
6 don't have him on a yacht, you don't have him driving fancy
7 cars, he's sleeping in a sleeping bag in his office so he can
8 build this company, and you have to understand that when you
9 decide whether Martin Shkreli intended to defraud these
10 people.

11 Martin never intended to defraud anyone. Maybe he
12 was working at a pace that only superhumans like him can work
13 at and maybe he screwed up and maybe he made mistakes and
14 maybe sometimes to keep an investor from driving him crazy he
15 said something which may not have been exactly truthful at the
16 moment, but Martin Shkreli was always truthful to the mission.
17 The mission to make Retrophin a success so that he can develop
18 the medicines that treat rare childhood diseases. He did it.
19 You can't just ignore the fact that he built a pharmaceutical
20 company in two years by himself. Who do you know who could do
21 that?

22 Every single witness in this case who came in here
23 said something about Martin Shkreli that you can't ignore.
24 It's never been mentioned in the government's summation and I
25 understand why. But every single witness, all of them said

1 one thing that they all have in common about Mr. Shkreli, that
2 he's stunningly brilliant, that he's brilliant beyond words,
3 he's the smartest man I ever met, said Steve Aselage. That
4 he's stunningly brilliant said everybody who invested and met
5 him and talked with him and dealt with him. Brilliant beyond
6 words, a true genius, someone who is a visionary.

7 Steve Aselage said when he says something, he
8 believes it because Martin sees the world through rose-colored
9 glasses. Do you remember that testimony? What does that mean
10 when you see the world through rose-colored glasses? It
11 doesn't mean you're a venal, corrupt person, it means you're
12 optimistic in your hope and ability to be able to make this
13 company a success and he did it.

14 Everybody had a comment. Have you ever met somebody
15 who everybody who deals with him has a comment? Brilliant,
16 stunningly brilliant, a genius, as smart as anyone I've ever
17 met, sheer intellect, is amazing. Caroline Stewart, the woman
18 who no one would hire but Martin gave her a job when she
19 couldn't get a job. She said he was mentally unstable. What
20 are you supposed to do with that characterization?

21 We're not saying that Martin is insane as a matter
22 of law so you should acquit him because he's insane, it's not
23 an insanity defense. What do you do with a witness who works
24 with the man who says he's mentally unstable and everybody
25 else says he's brilliant?

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1 Steve Richardson said Martin battled with
2 depression. And Steve Aselage says Martin came to California
3 for three weeks and didn't leave his hotel room. And when
4 Aselage confronted him and said, Martin, what's wrong with
5 you? Martin said -- and it's in the testimony, Martin said
6 I'm cutting back on my medication, I'll be okay. What do you
7 hear from these people? Every single witness said there's
8 something wrong with Martin Shkreli.

9 Schuyler Marshall, the Texas lawyer who worked for
10 25 years as a partner in a big firm and now runs a hedge fund
11 where evaluates private companies, he said to you that Martin
12 Shkreli reminds him of a character played by Dustin Hoffman in
13 the movie "Rain Man." That's how he reacted to Martin
14 Shkreli. Now he then said, when I asked him, what do you
15 mean, he said, well, Martin is very intense, and so focused,
16 and so intense, and so focused, and so intense that it
17 reminded me of Dustin Hoffman in "Rain Man."

18 Well, maybe, maybe that's the proper
19 characterization of Martin, but my point is, ladies and
20 gentlemen, everybody, including David Geller who said exactly
21 that, Martin travels to the beat of his own drum. So when you
22 go into his mind to try and determine whether Martin Shkreli
23 criminally intended to violate the law, you can't just ignore
24 who Martin Shkreli is from the testimony of the government
25 witnesses. They're not doctors, we're not offering you a

1 medical defense. But when you decide if a person is acting
2 with criminal intent, you have to look at who it is you are
3 analyzing. What it is that they are doing and why it is that
4 they are doing it. And you can't divorce from that analysis
5 what the person is, how they've been described. How every
6 single government witness has told you he has issues. And do
7 any of those issues interact with the ability to formulate a
8 criminal intent or good faith, and what does that mean to a
9 Martin Shkreli? Not what does it mean to a witness, what does
10 it mean to a Martin Shkreli?

11 Mr. Aselage, who is no friend of Martin Shkreli's
12 today, nevertheless said in the transcript, under oath on
13 cross-examination, that Martin Shkreli actually believes what
14 he says to be true when he says it. This is a gentleman who
15 is 65, 67 years old, who is a successful businessperson, who
16 worked with Shkreli for two years and clearly is not a defense
17 witness and clearly is not a friend of Martin Shkreli's,
18 that's a quote, Martin actually believes what he says to be
19 true when he says it. If that's true, he should not be
20 convicted. Because if Martin Shkreli actually believes that
21 what he's saying is true, I submit that rises to a defense of
22 good faith. And if you can't -- if the government doesn't
23 prove beyond a reasonable doubt that Martin acted with bad
24 faith, I think the Judge will instruct you that you have to
25 acquit.

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1 Maybe how Martin sees things that none of us do, and
2 he does, I submit, because he made a pharmaceutical company.
3 He made a pharmaceutical company in less than two years.

4 So when the government witnesses characterize
5 Martin, it's not just gossip and it's not just name calling,
6 it's highly probative evidence that you should consider.
7 We're not injecting a defense of insanity, but based on all of
8 the witnesses collectively, everybody told you they don't see
9 Martin Shkreli as completely normal. So you have to
10 characterize that when you discuss. This is not irrelevant,
11 it is very relevant. Because the government must prove Martin
12 Shkreli's bad faith beyond a reasonable doubt and if Aselage
13 said that he is right when he said that, that Martin always
14 believes it to be true, then that could be a defense requiring
15 you to acquit him of every count in the indictment even if you
16 see bad emails or even if you see a statement that you don't
17 believe to be completely accurate.

18 You know how I feel right now? I feel like a
19 lifeguard. I feel like a lifeguard on the beach, not at a
20 swimming pool. You know what a lifeguard's worst fear on the
21 beach is, not to be able to rescue someone. I see Martin
22 floating in his own little world 30 yards offshore, I'm
23 trained, I'm fit, I'm a good swimmer, I'm experienced, I could
24 swim out there and I can save him in two minutes, except if a
25 current takes him away. That's the lifeguard's worst fear,

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1 that there is a riptide or a current that drags the person
2 away and then you lose him, not because he shouldn't be saved
3 but because the current takes him. That's what I'm afraid of.
4 Not the facts, not the law, not the testimony, that Martin be
5 swept away in the current that surrounds Martin Shkreli, God
6 bless him, wherever he goes.

7 While you promised not to consider it, and we hold
8 you to that promise, you can't ignore it, you feel it, you
9 sense it and it would be a violation of everyone's duty if
10 there were to be a conviction based not on the testimony and
11 the evidence, but based on the fact that so many people have
12 something to say about my client. That's not how an American
13 courtroom is supposed to operate. Everybody gets the
14 presumption of innocence. Everybody gets a fair trial
15 including Martin Shkreli.

16 (Continued on the next page.)
17
18
19
20
21
22
23
24
25

Summation - Brafman

5332

1 MR. BRAFMAN: (Cont'g.) Let's just make one thing
2 clear so that we're not dancing about this subject, it is our
3 position that MSMB and MSMB Healthcare and Retrophin is Martin
4 Shkreli and does it at some point become a public company,
5 yes, and we'll discuss that, but there is nobody else who
6 deserves credit for being the person who took MSMB into MSMB
7 Healthcare and then ultimately into Retrophin and everyone
8 ultimately got repaid not because he stole money from anybody
9 to do it but because he saw to it that they did not lose their
10 investments. Martin, nobody else.

11 We have a couple of government charts and I want to
12 talk to you about them. You know, Agent Braconi testified and
13 he's a very articulate, smart young man and he did a very good
14 job and I have no criticism of him whatever as an FBI agent,
15 God bless him and I'm hope he serves our country for a long
16 time and I mean that seriously, but the charts that the
17 government prepared ignore the heart of the case. They show
18 you a chart and it's red and it's blue and it says the bank
19 account shows X and he's telling you the investors, that their
20 value is more than X. These charts ignore Retrophin. You
21 can't ignore Retrophin. Retrophin is the value.

22 When Martin Shkreli values the percentage of
23 Retrophin that each of these investors has, he turns out to be
24 100 percent right. Somebody gets 35,714 shares, why? Why are
25 they getting such crazy numbers? Why aren't they getting 100

Summation - Brafman

5333

1 shares? Why aren't they getting 10,000 shares? Because
2 Martin Shkreli in his own brain is calculating the value of
3 Retrophin.

4 This chart is like, you know, I show you a corner
5 lot that is not well maintained, it's rundown but on it is a
6 beautiful mansion and I tell you look at the value of that
7 corner lot but don't count the mansion and you say, what do
8 you mean, how can I do it without the mansion, the mansion is
9 what makes it valuable. No, no, ignore the mansion, just tell
10 me how this piece of land without the mansion, it's hard to do
11 that with the mansion that's worth 20, 40 -- \$80 million is
12 Retrophin's value, according to Martin Shkreli, and he doesn't
13 value it two years after when the SEC gets involved and it
14 becomes a public company. There is a foundation under a house
15 that has value. Retrophin has value when it becomes an idea
16 in his mind and he discusses it with Steve Richardson in the
17 summer of 2010 that he's going to build a company that's going
18 to be involved with finding orphan drugs to cure childhood
19 diseases and he takes that idea and he turns it into a real
20 company that's now worth close to a billion dollars, just as
21 Martin Shkreli suggested.

22 So, these people who are telling you that you're
23 dealing with a special mind that is beyond brilliant, that is
24 stunningly brilliant, they're right, you know they're right
25 because he did it. Could we collectively figure out how to

Summation - Brafman

5334

1 start a pharmaceutical company, how do you do it.

2 I want to show you something and you know it is just
3 a prop, it occurred to me the other night. This is a bag of
4 potato chips, you can buy it downstairs or in a supermarket
5 for a couple of bucks. You know what it takes to get this bag
6 of potato chips here, some farmer in Idaho has got to plant
7 potatoes, he's got to hope that the weather is right so that
8 the potato crop blossoms when it's ready. Somebody has got to
9 pick up the potatoes and bring them to a factory where they're
10 shelved and sliced and diced and fried and baked and salted
11 and then they've got to put them into a conveyor belt and into
12 a package. Then the package has got to go to a distributor
13 and the distributor has got to bring it here. Just for a bag
14 of potato chips you got 100 people have to deal with it and do
15 their job and do it right.

16 How do you build a pharmaceutical company, how do
17 you take an idea in Martin's mind and turn it into a billion
18 dollar company alone, you have to be a genius to do that. You
19 have to be someone who deals on a different level in terms of
20 intellect and brilliance and being able to do it is something
21 that most people, I say this with much respect, I don't think
22 any of us including all of you or me could even begin to think
23 about how do you start it, what kind of drug are you going to
24 develop, how are you going to do it, what lab are you going to
25 use, how are you going to basically understand the formula

Summation - Brafman

5335

1 that no one else has figured out up to this point in the
2 history of the world. No one has found the cure for PKAN, a
3 terrible childhood disease. Martin Shkreli, he did it. How,
4 in a heartbeat. Even Sarah Hassan who's no friend of Shkreli
5 said, oh, FDA approval could take 5, 6, 7 years but with
6 orphan drugs if you're really on to something because there's
7 a need because children are dying, the process can go faster
8 but you need to find the drug, you need to develop the drug,
9 you need to interest investors in it, you need to get the
10 pharmaceutical labs to produce it, you need to go through FDA
11 trials and then you need to get FDA approval and he did it.

12 And you can't just write him off and say, you know
13 what, you sent an email, the email isn't right because the
14 value in the bank is \$6 and you said it was \$12, I said it was
15 \$12 because I was counting the value of my company and you
16 can't value it because you don't understand how my mind works
17 unfortunately and therefore I look like a jerk but I'm not, I
18 built this company and it works.

19 And no one has come in here, Steve Aselage who now
20 runs this gold mine, now runs this gold mine, he ticked off
21 all the drugs that the company sells, they were all made and
22 produced on Martin Shkreli's watch. Thiola, biggest money
23 maker for Retrophin, Martin Shkreli; Chenodal, Martin Shkreli;
24 Vecamyl, Martin Shkreli. They haven't done anything since
25 Martin Shkreli left, according to Aselage, or at least that he

Summation - Brafman

5336

1 testified to.

2 I asked you in my opening statement, I know it may
3 have sounded strange, I asked you something and I hope you
4 took it the right way, I said you've got to use your common
5 sense, you've got to keep an open mind but when you keep an
6 open mind sometimes if we're not careful, I do it all -- you
7 could let your brains fall out. We can't, this is a very,
8 very, very critical decision you're going to make. The judge
9 will tell you that you're not allowed to consider sympathy.
10 We're not asking you for sympathy, we're not asking you to
11 consider what happens if he's found guilty. Make somebody a
12 felon for the rest of their life is a very, very, very tough
13 decision and when you're dealing with anyone, you have to be
14 right but when you're dealing with maybe one of the most
15 extraordinary minds of this generation, you need to be right
16 before you snuff that out.

17 The bag of potato chips just doesn't show up
18 downstairs in the concession stand so that we can buy it and
19 we can enjoy it, we can give it to our kids, somebody made
20 that bag of potato chips and if somebody has to go through so
21 many hoops just to get the chips here, think about it tonight
22 when you go home, everybody has private time, you have private
23 time when nobody is bothering you, maybe you're in the shower,
24 maybe you're trying to fall asleep, you're just laying in bed,
25 think about that, he did a pharmaceutical company from nothing

Summation - Brafman

5337

1 to production and that's why he lived in a sleeping bag like a
2 hermit in his office for two years. He's not a Ponzi guy who
3 takes the money and is buying Cadillacs and yachts.

4 For two years their records which they combed
5 through with a fine-tooth comb showed that Martin Shkreli got
6 \$26,000, \$26,000 for two years and there's \$72,000 of debit
7 charges and you have to include in the \$72,000 the fact that
8 Sarah Hassan had dinner with Martin Shkreli which he paid for,
9 David Geller had dinner with Martin Shkreli, Kevin Mulleady
10 had dinner with Martin Shkreli, he flew to Texas to the Dallas
11 boys so he could make a presentation. All of that came out of
12 \$72,000. So, for two years, even if you add the debit stuff,
13 it's 100,000 and he slept in his office.

14 He's not taking money from people who invest in MSMB
15 so that he can just enjoy life and run around and spend their
16 money. There's no evidence of that whatsoever. Yes, you'll
17 read about stuff that maybe you read about and you're going to
18 disregard that after Retrophin became a public company and
19 people had some access to shares, there's nothing wrong with
20 the CEO being able to enjoy somewhat of a life after spending
21 two years in a sleeping bag.

22 Martin Shkreli properly valued Retrophin, you can't
23 take that away and you can't ignore it. If I have valued my
24 pharmaceutical company at \$20 million and I am right and right
25 now from where we're sitting he's right, that 20 million is

Summation - Brafman

5338

1 appropriate to factor into the equation when I tell an
2 investor the value of your account, the value of your account
3 is \$300,000. And every single person got the appropriate
4 return plus a bonus for the aggravation and the nonsense that
5 they had to deal with because they're dealing with Martin
6 Shkreli.

7 I promise you a detailed discussion of every
8 investor but just for the moment I just want to show you what
9 we're talking about because the government didn't do this and
10 I want you to understand it because, as I told you before, if
11 Martin Shkreli wanted to defraud these people, he could have
12 taken a hike and said, you know what, Sarah Hassan, you got a
13 trust fund from your daddy, your dad is worth a hundred
14 million dollars, I'm sorry you lost a couple of hundred grand,
15 get over it. He didn't, he didn't.

16 Mr. Kocher, he put in \$200,000 here, his net return
17 is \$350,000, that's 75 percent return on your investment. You
18 are getting less than 1 percent in your savings account today,
19 less than 1 percent. This guy got \$150,000 more than he put
20 in. Did he have aggravation, yes. He's not on trial for
21 aggravation.

22 Lee Yaffe, we'll talk about him in a minute, didn't
23 invest with Martin Shkreli, Lee Yaffe's father, George Yaffe,
24 invested 12 years ago in a fund that's no longer in existence.
25 Martin Shkreli could turn around and say, excuse me, Elea

Summation - Brafman

5339

1 Capital is old news, I have nothing to do with it now, you can
2 sue, you can do whatever you want, I don't owe your father
3 anything but, no, he's an honest kid who realizes that he took
4 this man's money and he wants to pay him back and eleven years
5 later he eventually gives his son \$355,000, \$255,000 more than
6 his father invested. You can't just ignore that when you're
7 asking what was Martin Shkreli's intent.

8 Lindsay Rosenwald, Mr. hedge fund guy, he's a
9 professional hedge fund guy. He's a doctor. He's the head
10 that owns Chelsea Pharmaceuticals which you heard so much
11 about. He gave the PPM to his lawyer to review. He came in
12 and said, look, I put in 100, I got back 4 to 600,000, I think
13 I did okay. And what does he say about Martin Shkreli, Martin
14 Shkreli, on the bell curve he's way out on one end. That's
15 how he described him. What does that mean, the bell curve is
16 supposed to define normalcy, the closer you are to the center
17 of the bell, the more normal people think you are. He puts
18 him on one edge way out there. What does that tell you, that
19 Lindsay Rosenwald was defrauded? Lindsay Rosenwald didn't
20 read the private placement memorandum and we'll go through
21 each of those and their testimony.

22 David Geller; David Geller is the brother of Al
23 Geller who the government didn't call, and we'll discuss that
24 in a minute, but David Geller had nothing to do with Martin
25 Shkreli when he got involved, he took the advice of Kevin

Summation - Brafman

5340

1 Mulleady who was Al Geller's broker and Kevin Mulleady told
2 him Martin is a genius and Martin makes a lot of money and
3 Martin has made a fortune for my brother Al and that's why
4 David Geller signed up. Remember David, he wore a polo shirt
5 one day, a blue one, and then the next day a gray one, kind of
6 a nice man. He said, yeah, I mean I got back 615 for a
7 \$200,000 investment and you know what he said afterwards, he
8 said: No other investment I have ever made has given me that
9 kind of return.

10 And Martin Shkreli is on trial for his life because
11 he gave David Geller three times more than he invested.

12 John Neill, rich man, Texas, 74 years old. He
13 testified just a few days ago, came here in a gray suit and
14 glasses. He's one of the Dallas boys who got his information
15 from Darren Blanton. He listened to a dinner party where
16 Gloria Euclid and Darren Blanton talked about how much money
17 they were making with Martin Shkreli. That's why he invested.
18 He never read the private placement memorandum, he told you
19 that. He said: I signed a subscription agreement which said
20 I read it but I didn't read it, I'm a very rich man, I'm
21 involved in 100 hedge funds. He said: I put in \$500,000 in
22 my wife's name and I got back \$1,570,000. Why did he get back
23 \$1,570,000? He didn't threaten to sue anybody. Because
24 Martin felt he should be getting his money back in multiples
25 because of the aggravation he put him through. Martin Shkreli

Summation - Brafman

5341

1 didn't have to do that. If you're committing a fraud, you
2 don't care about your victims. If you're committing a fraud,
3 you start out with the proposition that I don't care about the
4 victims or I wouldn't be doing this. Everything he did is
5 inconsistent with bad faith.

6 Steve Richardson, then we'll talk about him at
7 length in a minute, Steve Richardson, the chairman of the
8 board of Retrophin, he made \$1.9 million, \$1.9 million on a
9 \$400,000 investment and he resigned one week after Aselage got
10 a report from the special commission assigned by the new board
11 and their counsel to do an investigation and he told you they
12 concluded that Steve Richardson and Martin Shkreli had a
13 personal relationship, that's what he said, a personal
14 relationship and he resigns as the chairman of the board.

15 What did Steve Richardson do for the two years he
16 was on the board except try and seduce Martin Shkreli and I
17 will discuss that in a minute and I'll explain to you why I'm
18 saying that and how respectful I'm trying to be. But he made
19 a lot of money and then he cut and ran, he didn't care about
20 the shareholders in Retrophin, he left and while he was there
21 is there anything you could point to in the evidence, anything
22 that you could point to in the evidence that he did to better
23 the company? One thing? Nothing. Neither him or Aselage.

24 Schuyler Marshall, Schuyler Marshall is my favorite
25 witness and we will discuss that in a minute, but he's the guy

Summation - Brafman

5342

1 who called him Rain Man and he's the guy who came here from
2 Texas. He's part of the Darren Blanton group. It's Darren
3 Blanton, Schuyler Marshall and John Neill. And Schuyler
4 Marshall, who came here from Texas, he's about 67, 68, was a
5 lawyer for 25 years and now he's the head of a private equity
6 fund where he evaluates companies, he's the one who told you
7 that when the SEC called him, he said, "I don't want to be
8 interviewed," and he called Martin Shkreli and he testified
9 that Shkreli said, "Go down there and tell the truth, there's
10 nothing to hide, go down there and tell the truth." That's in
11 the testimony. And Schuyler Marshall says, "I told Martin no
12 harm, no foul, I got back my money, I got back more than I put
13 in, I don't think you tried to defraud me -- that's the import
14 of his testimony -- and I'm not going to the SEC." And he's
15 been a lawyer for 40 years, 25 as a lawyer and the next 15 as
16 the head of an in-house counsel job.

17 Sara Hassan, remember her, first witness in the
18 trial, maybe in her early twenties, essentially her father is
19 one of the most successful pharmaceutical executives in the
20 world. He told us at least five times in his testimony that
21 he has a very large footprint in the pharmaceutical industry,
22 remember those words. Thank you very much, Mr. Hassan. Then
23 why did you come into this courtroom and lie. And I'm going
24 to do that, I'm going to go through his testimony and show
25 you, and it takes a lot of guts to call a head of a

Summation - Brafman

5343

1 pharmaceutical giant a liar but Fred Hassan came into this
2 courtroom and in 2017 the last thing he wanted to do was align
3 himself with Martin Shkreli and all of the crap that comes
4 along with that; if you're in the pharmaceutical industry, you
5 can't come in here pro-Martin Shkreli, you've got to come in
6 here and basically put your head down and hope nobody
7 understands that you're lying, but we do our homework, that's
8 why cross-examination is so important.

9 Sarah Hassan got back \$1.8 million and if somebody
10 tells you that the fraud is depriving these people of the
11 right to use their money when they wanted to use it, when she
12 got back her Retrophin shares she waited a year before she
13 cashed them out and she watched the price go up. She's
14 investing \$20 million for her family and Martin Shkreli came
15 to know her through Brent Saunders. Brent Saunders has been
16 her father's right-hand man for 20 years and she told you that
17 Brent Saunders vouched for Martin Shkreli, that Martin Shkreli
18 made a lot of money for Brent Saunders. You didn't hear
19 anything about this from Ms. Smith this morning. I understand
20 why she was hoping we would forget about it. Martin Shkreli
21 didn't fool Sarah Hassan, oh, yeah, now two years later, yes,
22 I would have liked to know who the auditor was. That's rich
23 people's BS, I won't use the real words. You know why,
24 because Brent Saunders told her Martin Shkreli is making me
25 rich, go with him and she did. There was nothing Martin

Summation - Brafman

5344

1 Shkreli said to her that made her want to invest.

2 And my favorite guy, my favorite guy, I'm saying
3 that sarcastically, I want the record to reflect that, is
4 Darren Blanton. Remember Darren, remember Darren Blanton, the
5 rich Texas guy, we'll talk about him in a minute, we'll show
6 you how on cross-examination he turned into an almost
7 offensive spectacle whereas on direct examination, oh, man, I
8 heard about Martin Shkreli and he told me about the fund and I
9 invested because of what Martin Shkreli told me. That's not
10 true. Because on cross-examination you learned that Darren
11 Blanton met Martin Shkreli and Darren Blanton was investing
12 with Martin Shkreli and Darren Blanton made a fortune
13 investing with Martin Shkreli and that's why he invested at
14 MSMB. Talk about a track record, Martin Shkreli had an
15 excellent track record with Darren Blanton. He made him
16 richer than he is.

17 All right. So, here's the proposition, it's not
18 perfect but here's what I want to ask you, here's the fraud,
19 give me \$300,000, trust me, I will not let you lose that
20 money, and I go through ups and downs and peaks and valleys
21 but true to my word I don't let you lose the money and in
22 order for you not to lose the money, I sleep in my office in a
23 bag like a vagrant for two years because I'm working on a
24 company which if I am right and it is productive, not only
25 will we save children's lives but I'm going to give you back

Summation - Brafman

5345

1 three times the money that you gave me; so, here is the deal,
2 ladies and gentlemen, you see me as an extremely brilliant
3 young man who's odd and strange, I remind you of the guy in
4 Rain Man, but you give me \$300,000 and a year later or
5 fourteen months later or six months later I give you back
6 \$1.5 million. Would you take that, would you take that
7 proposal right now? Yeah, you would, you would. These people
8 had faith in Martin. He didn't let them down, he didn't fool
9 them, he didn't defraud them and his good faith is so real it
10 jumps off the pages of the transcripts.

11 So, when you're deciding whether or not the
12 government has proved Martin Shkreli guilty beyond a
13 reasonable doubt, you can't just do that in a vacuum, you have
14 to do it in terms of what actually happened. What is Brafman
15 talking about, just went through emails and schedules and
16 printouts and forms over and over and over again that had
17 nothing to do with the testimony of these witnesses and on
18 paper, yeah, you know what, it doesn't look great. You want
19 to analyze the dates and move stuff around, sure, I can show
20 you that maybe, maybe, maybe we're not getting the scoop.
21 They got the real scoop. This is not a case where anybody was
22 defrauded and this is not a case where from the evidence you
23 should conclude that anybody intended to defraud.

24 You know there's an expression when I was growing
25 up, it loses something in the translation, but the expression

Summation - Brafman

5346

1 is: You're smart, you're smart, you're smart, you're not so
2 smart. It's a real expression. You're smart, you're smart,
3 you're smart, you're not so smart.

4 Everybody says Martin Shkreli is a genius. He's
5 not. Maybe he is a genius in certain things but in terms of
6 people skills, he's impossible. They deal with him, they know
7 what they're getting because everyone tells you they found him
8 odd, they found him strange, they found him really weird and
9 they gave him their money. Why? Because they recognized
10 genius.

11 David Geller says: My brother told me he's the
12 smartest guy he ever met. Steve Aselage told you he's the
13 smartest person he ever met. Think about that, I meet smart
14 people, you meet smart people, how do you decide when you meet
15 someone they're the smartest person you will ever meet in your
16 whole life. You've got to take off all the smart people you
17 met and then say he's smarter than all of them. How do you
18 say that about someone unless they really are that smart.

19 But being a genius and being brilliant, there's a
20 fine line you walk between being that smart and a little bit
21 off or a little bit odd or a little bit crazy and he's all of
22 the above. So, he's really smart. If he wasn't so smart, we
23 wouldn't be here. If he wasn't smart enough to make
24 Retrophin, we wouldn't be here. They'd have lost their money
25 in MSMB, maybe they would have sued him but it's years and

Summation - Brafman

5347

1 years ago. The SEC only got involved because it is a public
2 company, Retrophin.

3 You know, one of the people who's working with me
4 said something the other day, says, you know, you look through
5 these documents, you come away with the impression that Martin
6 Shkreli maybe wasn't 100 percent truthful on every single day
7 every time he opened his mouth, and none of us are, but he was
8 always truthful to the mission and the mission was Retrophin.

9 So, I'm going to tell you a story, it's a funny
10 story and I think you'll laugh and I think you'll find it
11 funny and I'm not telling it to you because I want to
12 entertain you, sometimes when you tell a story that resonates,
13 it really helps jurors understand what I'm talking about
14 because the government completely ignored what
15 cross-examination is about. So, I'm going to tell you a quick
16 story and then we're going to move into the cross-examination.

17 The story begins in an old town 100 years ago at a
18 busy intersection and a horse-drawn wagon runs into the
19 intersection with the driver and a wild dog runs out and
20 scares the horse and the horse rears up on its hind legs,
21 falls onto the dog, the wagon falls down, the driver gets
22 thrown away and two years later there's a lawsuit because the
23 driver is claiming that he was injured in the accident. And
24 the police officer who's on the scene gets called to the
25 witness stand and the government lawyer or the insurance

Summation - Brafman

5348

1 company lawyer says: Officer, you approached the scene of the
2 accident? Yes. Tell me what the driver said as soon as you
3 approached him. And he said: The driver held up his hand and
4 said, I'm okay, I'm okay, I'm okay. And he says no further
5 questions, and he's obviously trying to suggest that if he was
6 injured, this is a recent fabrication because at the scene he
7 said he was okay.

8 Now I stand up, I'm going to cross-examine the
9 police officer and all I do is ask him one question: Officer,
10 tell me everything you saw and did on the day of the accident
11 before my client told you, "I'm okay." And the police officer
12 says: You know, I came there, it was horrible, I mean it was
13 just horrible. The horse was on top of the dog, the dog had
14 four broken legs and was writhing in pain. I took out my
15 service revolver and I shot the dog because I wanted to put
16 him out of pain. Then I turned to the horse, the horse had
17 gashes through his whole side from the wagon, he was horribly
18 in pain and I took the gun out and I shot the horse because I
19 wanted to put him out of his misery. And then I turned to the
20 driver and the driver said, "I'm okay." "I'm okay."

21 Doesn't it change, doesn't it change when someone
22 gets up and asks the appropriate question to flesh out the
23 scene.

24 Now, no one, no one in this room right now besides
25 Mr. Shkreli understands the seriousness of this moment as much

Summation - Brafman

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1 as I do because I'm speaking to you not on my behalf. When
2 this case is over, win, lose or draw, I go home. I'm talking
3 to you about Mr. Shkreli's life. So, yes, it was a funny
4 little aside but doesn't it teach you in the minute why
5 cross-examination is so important when you're trying to
6 understand. This is not a science, we don't have test tubes
7 and biopsies and MRIs and CAT scans. You have to decide is
8 someone telling me the truth, is that a person I would believe
9 beyond a reasonable doubt and not hesitate to believe in an
10 important decision in my life and in order for you to really
11 get a picture of who the person is and what really happened,
12 you need someone like me or someone like one of the other
13 defense lawyers to flesh it out, not to go through a canned
14 rehearsed direct examination and what did you do next and what
15 did you do next and what did you do next, but why did you do
16 it, what did you say, what was said to you, who said it.
17 That's my job.

18 And, ladies and gentlemen, I don't think, and I'm
19 taking a leap here, I don't think you found us to be
20 obstructionists, I don't think you found our job not to be
21 important. I hope you leave this trial, regardless of your
22 verdict, with the respect for criminal defense lawyers who
23 sometimes have to stand up to the government and say prove it,
24 prove it with real reliable consistent evidence, not just say
25 it, not just accuse but prove it, prove it to people like you

Summation - Brafman

5350

1 who don't come into a courtroom with any prejudice, who don't
2 work for the government, who don't work for Mr. Shkreli, who
3 don't know any of the parties, who are willing to serve
4 because you're honest people and for honest people to make a
5 decision they need to know all of the facts, not a sanitized
6 version of the facts. That's not appropriate and it can't
7 stand, certainly not on my watch.

8 In good faith I submit you can conclude from the
9 evidence that Martin Shkreli believed in his own mind that
10 Retrophin was a valuable gem of an idea and that he was going
11 to sacrifice his entire existence for two years to get that
12 into a place where it would make a fortune and cure diseases
13 and when it made a fortune and when it became successful, what
14 did he do, did he take all the money and say, screw you MSMB
15 investors, that's a long time ago, read the partnership
16 agreement, you can't really sue me, no. He went to them and
17 he made them not whole, he made them richer than they already
18 are. And that's something you need to understand not as a
19 complete defense but if Martin Shkreli's mindset was let me
20 damage these people and then leave, he had the ability to do
21 that.

22 Let's talk about Sarah Hassan. Let's talk about
23 Ms. Hassan. They touched upon it, they showed you a couple of
24 emails and a couple of letters. Let's talk about what came
25 out from her whole testimony. I'll do it quickly but let me

Summation - Brafman

5351

1 tell you what she said. She came into this courtroom and she
2 basically said, I invested with Martin Shkreli because of what
3 Brent Saunders said to me. Brent Saunders was investing with
4 Martin Shkreli and he was making a fortune and Brent Saunders
5 isn't a stranger, I grew up with him my whole life, he's my
6 father's right-hand man and everywhere Fred Hassan went Brent
7 Saunders went from Bausch & Lomb to Schering-Plough,
8 everywhere, twenty years he's been working with Fred Hassan.

9 So, he's talks to the boss's daughter. He's going
10 to give the boss's daughter bad advice? What's the advice he
11 gives her, bet on Martin Shkreli, he's a winner. This
12 government trial has ignored Brent Saunders. Brent Saunders
13 may be one of the most important witnesses in this case.
14 Brent Saunders is one of many who weren't called but he's
15 right here (indicating.)

16 Brent Saunders is one of the most important
17 witnesses in this case and he hasn't been called and nobody
18 around Fred Hassan has been called, Tim Koestler wasn't
19 called, Brent Saunders wasn't called, Robert Bertolini wasn't
20 called, Ken Banta wasn't called. This is Brent Saunders'
21 posse. Aselage said Shkreli had a posse. Fred Hassan
22 traveled with these people from company to company to company,
23 all pharmaceutical executives and none of them were called by
24 the government. Why? Now look, I know they're going to get
25 up on rebuttal and say the defendant has the right to call

Summation - Brafman

5352

1 witnesses, doesn't have to but they have subpoena power. Give
2 me a break. I can't give Lee Yaffe a non-prosecution
3 agreement, I don't have the power to do that. If I subpoena
4 someone and they tell me I'm going to take the Fifth Amendment
5 or I'm not coming, what do I got to do, move to hold them in
6 contempt to get them here. The FBI shows up, they show up.
7 It's not the same. And the judge will tell you that the
8 defendant never, ever, ever has the burden of proof because
9 you can't prove you're innocent. That's why the government
10 always has the burden of proof.

11 So, Sarah Hassan, God bless her, made a lot of
12 money. She invested her father's money and she invested it
13 herself and then she added more money through Dynagrow which
14 was what, a \$20 million fund where she was investing Fred's
15 money and Fred Hassan, I'll show you in a minute, lied and
16 make believe, I don't know what Sarah was doing, I don't know
17 what she was investing in, she never told me when she got \$1.8
18 million back. It's nonsense, it's nonsense. 90 percent of
19 the \$20 million was Fred's money. He's going to let his
20 daughter just make an investment like that without him knowing
21 all of the details and vetting it through Brent Saunders. You
22 know it was vetted through Brent Saunders because Brent
23 Saunders introduced her to Martin Shkreli.

24 She was the first witness, she was about early
25 twenties, dark straight hair, was wearing a beige and black

Summation - Brafman

5353

1 type outfit. She was a very nice young lady on direct
2 examination, turned into a crazy person the first time I asked
3 her a question. Do you want to have the testimony read back,
4 it is yes, yes, yes, no, no, no when the government asked her
5 a question; I asked her a question, ahhh, your client is a
6 bum. Give me a break. You went out to dinner with him, he
7 sent you books, you had a relationship with him. In 2015
8 after you got back your money, your last email, thank you,
9 Martin, for everything, not you son of a gun, you defrauded
10 me. Suddenly in 2017 you've got to come into a public
11 courtroom, you're not coming here to defend Martin Shkreli if
12 you're Fred Hassan's daughter.

13 (Continued on next page.)
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25

1 BY MR. BRAFMAN:

2 She had her own lawyer. Her own lawyer from a big
3 firm. Not only vet the private placement memorandum, but
4 also her settlement agreement. She told you that when she
5 signed her settlement agreement her lawyer, who is a lawyer
6 at Proskauer, one of the principal firms in New York and in
7 the country, was her lawyer. She had her own lawyer who was
8 interfacing with Evan Greebel, and now they tell us that her
9 agreement is fraudulent? That her agreement should have
10 never been signed? Do you want to mistrust Evan Greebel
11 where you have to right to?

12 What about her lawyer? Why is she letting him --
13 why is she letting her sign an agreement where she's getting
14 paid from Retrophin when her debt is not to Retrophin --
15 where the debt is not Retrophin? It is Retrophin, because
16 it's Martin Shkreli.

17 This is not a civil lawsuit where Retrophin -- they
18 have a lawsuit. They're looking for \$65 million. God bless
19 them. This is not about that. This is whether or not he
20 becomes a felon. This is not about whether Retrophin has a
21 right to claw back some of its money where Sarah Hassan sued.

22 Did she tell you she had to give back her money?
23 Why not? Why doesn't Retrophin sue her if it's a settlement
24 agreement that the Board never approved? This is rich-people
25 BS, ladies and gentlemen. This is the Sarah Hassan hacking

Summation - Brafman

5355

1 to go back to her daddy with a check for \$1.8 million which
2 she turned out of \$300,000. And he said, That's great my
3 darling. I'm so happy you made money for the family. But
4 when they come here and they tell the story, Fred Hassan is
5 staying as far away from Martin Shkreli as he possibly can,
6 and we're going to show you stuff in a few minutes that's
7 going to make your head spin because it's four weeks ago, and
8 maybe you don't remember everything, but I'm trying to
9 remember everything and help you remember everything.

10 Fred Hassan came into this courtroom and he said, I
11 am really not an investor in Retrophin. Yes, you are.
12 Dynagrow is 90 percent your money, and Dynagrow invested in
13 Retrophin. He came into this courtroom, and he is trying to
14 distance himself from Martin Shkreli, even if an order to do
15 so, he's got to look like a fool. Do you remember him?
16 Seventy-one years old, very well groomed, navy blue suit,
17 white shirt, red tie, very articulate, very impressive,
18 business leader, he told you five times, I think in his
19 testimony, I have a very large footprint in the
20 pharmaceutical industry. Do you know what that means?
21 Everybody knows me in the pharmaceutical industry, and the
22 last person that I want to be associated with is that man.
23 So I'm going to stay as far away as I can until Ben Brafman,
24 just doing his job, pulls him back in and makes him confront
25 what really happened...what really happened.

Summation - Brafman

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1 And once you look at these things you realize that
2 he's just giving you what he thinks he can get away with.
3 And when confronted, he admits. When confronted, he admits.
4 You know, it's his daughter. According to her, Martin
5 Shkreli tried to defraud her. That's her claim. They said
6 things to her that weren't true, so therefore, he's guilty of
7 serious crimes. If you did that to my daughter, I would not
8 be giving you glowing remarks when *The New York Times* calls
9 me and say, What do you know about this person? I would say,
10 That guy tried to rip off my daughter. I would not say that
11 Martin Shkreli is one of the merging leaders in the
12 pharmaceutical industry, and then write to Martin Shkreli and
13 say, Lots of good luck. I hear you're doing great work.

14 You want to convict Martin Shkreli? You have to
15 explain that before you do, because a doubt, a reasonable
16 doubt is a doubt for which you can give a reason. And Sarah
17 Hassan and her father gave you rich person's -- rich people's
18 BS in their testimony, and you can't accept that. You cannot
19 accept that.

20 Fred -- Fred Hassan said, I wasn't an investor in
21 Retrophin. Yes, you were. Defense Exhibit 2000 -- Defense
22 Exhibit 1211. Let's put it on the Elmo. I don't have a
23 PowerPoint. Let's put it on the Elmo.

24 Do you have it on your screens, ladies and
25 gentlemen?

Summation - Brafman

5357

1 THE JURY: Uh-huh.

2 BY MR. BRAFMAN:

3 All right. This Defense Exhibit 1211 in evidence.

4 It starts from the bottom. From Brent Saunders to Tom

5 Koestler, a Fred Hassan crony; to Bob Bertolini, a Fred

6 Hassan crony; to Brent from Fred Hassan; from Brent Saunders:

7 "Tom, Fred, and Bob: I am writing to provide

8 details regarding the investment in Retrophin, which is

9 working on a treatment for muscular dystrophy. This is a

10 high-risk investment; however, I believe Tom, Bob, and I are

11 all in agreement that it is a good investment from both a

12 business prospective and our ability to help fund the

13 treatment for this horrible disease."

14 These three pharmaceutical executives with dozens

15 and dozens of years of experience are telling their boss that

16 it's a good investment from both a business prospective and

17 our ability to help find a treatment for this horrible

18 disease. And what does Fred say? Fred says back to Brent.

19 "Beth has cleared the investment of the muscular dystrophy

20 project. Sarah will be proceeding with it early next week.

21 Fred."

22 He doesn't say, Leave my alone. I don't want to

23 have anything to do with it. Sarah has cleared this

24 investment because it's Fred Hassan's money. And he is not

25 an equity partner in this company, which he requires to have

Summation - Brafman

5358

1 there to be compliant. Check it out. So they check it out
2 and he tries to hide his involvement in the investment. So
3 he does it through Dynagrow, which is his money, but the
4 person on the paper is Sarah, so he can always disavow the
5 investment when people say, You investing with Martin
6 Shkreli? No. I have nothing to do with this. My daughter,
7 she's -- just I'm just trying to give her some experience.
8 He's an investor.

9 When -- when Mr. Loewy from the pharmaceutical
10 magazine called him, said: Did you say to Mr. Loewy Martin
11 was a smart entrepreneur, yes or no?

12 Answer: Yes.

13 Question: This was in 2004, long after the issues
14 with your daughter arose between her and Mr. Shkreli?

15 Answer: Yes.

16 What's going on here? A pharmaceutical magazine
17 calls you, the head of the industry, basically, and asks you
18 about a person who your daughter claims defrauded her and
19 what do you say? You say good things about him.

20 And then the Government shows you a slide that
21 lists Fred Hassan as a reference for Martin Shkreli. And do
22 you remember what they said to him? Were you a reference for
23 Martin Shkreli? Did you allow him to list you as a
24 reference? When someone tells *The New York Times* in a
25 pharmaceutical newspapers that you were an emerging leader

Summation - Brafman

5359

1 that is going to do great things, that's a reference. I have
2 a right to conclude from that that I can list you as a
3 reference when you're telling the whole world that I'm doing
4 do good work.

5 Look at this. Look at this e-mail, Defense
6 Exhibit 1209. From Martin: "Hi, Fred. I read
7 *The New York Times* article and I -- I'm sorry -- I read
8 *The New York Times* article and I really appreciate you giving
9 this to the world. Your comments here and in other places
10 have helped me tremendously. Thanks for making your best
11 advice available to not just a few of us, but everyone
12 willing to pick up a newspaper."

13 And he writes back: "Martin, thanks. It's great
14 to see hardworking young business builders like yourself gain
15 traction. Fred."

16 This is in July 2013. This is at the height, at
17 the height of the dispute with Sarah and Martin. Suddenly in
18 2017 he has to acknowledge that he's given references to
19 *The New York Times*?

20 And then what happens? Well, you know, if you're
21 an investor in a hedge fund as people have told you, you're
22 supposed to get a K1, which is a tax form that every limit
23 partner gets. And the K1 goes out, and then all hell breaks
24 loose because Fred Hassan is listed on the K1,
25 Government Exhibit 1035, and it shows Sarah Dynagrow [sic]

Summation - Brafman

5360

1 and Fred Hassan. Now, obviously, it's Sarah Hassan, not
2 Dynagrow, so they typed it wrong. But it goes to her and
3 Fred Hassan. And Fred Hassan's office freaks out, and they
4 make them change it. And they said, Oh, no. It was a
5 mistake. It was a mistake. It was a mistake.

6 Was it a mistake? Let's see how this mistake
7 happened, ladies and gentlemen. This is
8 Government's Exhibit 103-16. You can't just ignore this
9 stuff in your PowerPoint and just put up that which helps
10 your case. This is from Fred Hassan's office. Second -- the
11 first -- the second page of 130-16. "Mr. Shkreli, Mr. Hassan
12 needs to sign his tax return on Thursday before he begins
13 traveling again on Friday. Would you be able to scan the tax
14 form directly to his accountant? I am copying him on this
15 e-mail."

16 Now, if Mr. Hassan is not an investor, why does he
17 have to sign the return, if it's only Sarah? Why is his
18 accountant and his administrative assistant telling this
19 person at Mr. Shkreli's office that Mr. Hassan has to sign it
20 and he needs to leave, so please get this there right away.
21 And then somebody there finds out that, Oh, my God, Fred.
22 They've got you listed here. You didn't get cleared by -- I
23 think it's your -- your compliance program for you to invest.
24 You only got cleared for her to invest. So we need to make
25 believe like you are not an investor. That's what happened

Summation - Brafman

5361

1 here, ladies and gentlemen. It's not the end of the world
2 and it's not the most important exhibit in the case. But it
3 tells you that they were not being told the whole story, the
4 whole truth and nothing but the truth by Fred Hassan.

5 And if you really have made up your mind -- I hope
6 not -- to convict Mr. Shkreli already without hearing the
7 judge's instructions, then there's nothing I can say to move
8 you. But I hope you still have an opening statement, because
9 you're supposed to still have an open mind. And if you have
10 an open mind and you still haven't made up your mind, you
11 have to factor that e-mail into the equation as to whether or
12 not Sarah Hassan is the victim of a fraud and whether or not
13 you can consider anything Martin Shkreli said to Sarah Hassan
14 when you decide whether to convict Mr. Shkreli.

15 Lindsay Rosenwald is the next investor, I think --
16 or one of the investors. He put in \$100,000. He's a
17 professional hedge fund guy. He has his own lawyer vetting
18 this. He ultimately gets between 4 and \$600,000. You know
19 what I thought was interesting in this case? Nobody knows
20 the difference between 4 and \$600,000. Wouldn't you know if
21 you made 400 as opposed to \$600,000. Do rich people claim
22 that they're so rich that they don't know the difference?
23 Trust me. Rich people know exactly how much money they have,
24 exactly how much money they make. That's how they became
25 rich.

Summation - Brafman

5362

1 This business of, Oh, I don't pay attention, is
2 because they want you to think that this wasn't something of
3 real importance to them. Well, Lindsay Rosenwald was not a
4 victim. Lindsay Rosenwald is a professional hedge fund
5 person. He's the one who founded Chelsea Therapeutics. He's
6 the one who said, Martin was very smart. I was impressed
7 with Martin. He knew his stuff. Martin is way out on the
8 bell curve somewhere, which everyone else seems to think
9 also. But it didn't stop him from investing. When you're on
10 the curve or on the spectrum or wherever you are, that
11 doesn't mean that you can't do good things. It may mean that
12 you have the extra ability to do good things.

13 And Lindsay Rosenwald is a doctor. He's a medical
14 doctor besides a hedge fund guy. So he sees Martin. And
15 what does he say about Martin? Martin's on the outer fringe
16 of the bell curve. What does that mean? This is an illegal
17 term. The judge isn't going to define it for you.

18 You have a right as a juror to use common sense, to
19 feel in your heart what that person is trying to tell you.
20 And what Lindsay Rosenwald is trying to tell you is that this
21 is one strange dude, but even though I am a brilliant hedge
22 fund analyzer and even though I'm a medical doctor, I'm going
23 with him. That tell you something. He saw in Martin the
24 genius that is Martin, and he hitched his wagon to it, and he
25 turned 100,000 into 400 or 600,000, depending, you know, how

Summation - Brafman

5363

1 much he made.

2 Nobody makes that kind of money on an investment
3 today or last year or two years ago. The days are over when
4 the banks used to pay you 5 percent just for keeping your
5 money there. That's gone. So people with a lot of money
6 look to make money on their money. And in order to make
7 money on your money when you're that rich, you need to take a
8 risk, and one of the ways you take a risk is you bet on a
9 hedge fund. And if it comes through, you get a home run.
10 You've turned 100 into 600. And if it doesn't -- he said,
11 This is not like a big deal for me. That's what he said.
12 This hundred is just like play money. I'm worth a billion,
13 so I'll give you a hundred grand. If you turn it into a half
14 a million, I'm happy. If I lose it, it'll deal with it.
15 They're not playing with rent money. Nobody in this case who
16 invested with Martin Shkreli suffered any economic harm
17 whatsoever. And listen to the Court's instructions with
18 respect to wire fraud to see if they're required to have
19 sustain some loss.

20 And Richard Kocher? Richard Kocher is a nice man.
21 And Richard Kocher probably should not have ever gotten
22 involved with a guy like Martin Shkreli because Richard
23 Kocher and Martin Shkreli -- you know, Richard's -- you
24 got -- Martin's in the Hula Bowl and Richard Kocher's in
25 Yankee Stadium. They're such different personalities.

Summation - Brafman

5364

1 Richard Kocher is a buttoned-up guy who deals in real estate,
2 and he can't handle being in Martin's world.

3 But Richard Kocher didn't get involved because he
4 read the prospectuses or Martin told him anything. He is a
5 Kevin Mulleady guy. He was his broker, Kevin Mulleady.
6 Kevin Mulleady has more activity in this case than Martin
7 Shkreli. He's on the list. They didn't call him as a
8 witness. They used his e-mails to tell you Martin's guilty.
9 They didn't call him as a witness. Kevin Mulleady put more
10 investors in the case than Martin Shkreli did, but they
11 didn't call him as a witness. Do you know why? Because if
12 they did, he's subjected to cross-examination. If they don't
13 call him, they can put in his e-mails under some rule of
14 evidence that the allows the emails, and then he doesn't have
15 to be cross-examined. Richard Kocher was put into this case
16 by Kevin Mulleady. Everything Kevin Mulleady had told him
17 about the deal is what prompted Mr. Kocher to get involved.

18 And what did Kevin Mulleady tell him? Martin
19 Shkreli is a genius. He doesn't remember being told about
20 any companies that Martin Shkreli invested in, but Martin
21 Shkreli is a genius. And he gets a settlement agreement and
22 he has his own lawyer, his own lawyer helped draft it with
23 Evan Greebel, and no one is asking him to give back any
24 money. And Retrophin is not suggesting that he got an
25 illegal, fraudulent settlement agreement. Martin Shkreli

Summation - Brafman

5365

1 made Retrophin. When Martin Shkreli made Retrophin, he has
2 the right -- now, it didn't become a public company until
3 December of 2012. During the period in question, Martin
4 Shkreli is the only person who really has a right to deal
5 with Retrophin because nobody else has earned that right.
6 And we'll go through that in a minute.

7 I want to talk to you now about Darren Blanton, and
8 it's a very importance witness. And I'm glad they called
9 him. They had no choice but to call Darren Blanton because,
10 you know, he's the one who puts all the Dallas people in.
11 You know, there was a movie a few years ago called the
12 *Dallas Buyers Club*, I think it was called? Let's call this
13 the Dallas Investment Club, because that's what you got.

14 You got Darren Blanton, who's the big guy from
15 Texas who wore a navy blue suit and a blue shirt, and he's
16 about 55 years old, and he wouldn't tell you how much money
17 he had. Do you remember that? He just wouldn't tell you how
18 much money he had. He's the one who the reporter said
19 described himself as a con man. Do you remember that, when I
20 confronted him with that? Do you know what he said? She
21 wrote it down wrong.

22 Ladies and gentlemen, what do you say to a reporter
23 that sounds like con man that ends up in an article about you
24 that says you're a con man? What could you possibly have
25 said to her that translates into her misunderstanding you and

Summation - Brafman

5366

1 writing it up as con man? This is such an offensive response
2 under oath. He never thought I'd find the article. Granted.
3 The Government didn't confront him with the article. Granted
4 I'm trying to do my best to do a good job for Mr. Shkreli,
5 and when a witness tells a publication, I am a con man, that
6 resonates with me when I got to cross-examine him.

7 So what does he do when he's confronted with this,
8 sheepishly say, Yes, I'm a con man? No. He says the
9 reporter got it wrong. How easy is that to do. And I am
10 asking you, ask yourselves tonight or when you start
11 deliberating in this case, What is it that you could have
12 said to this woman who is interviewing you that translates
13 into her writing that you told her you were a con man? That
14 doesn't happen. If you said your name was Phillip and you
15 spell it with two L's, yes, she might spell it with one L.
16 But to just make up con man and write it a publication when
17 you are a prosperous business person in Dallas, Texas? He's
18 just lying to you. He had no respect for your common sense.

19 I said to him, What is your net worth? Well, I
20 don't know. Can you give me, is it \$10 or 100 million? I
21 don't know. Well, did you tell the paper that your horse
22 collection was worth between 25 million or 75 million? Well,
23 I may have. Well, is it? I don't know. They're hard to
24 value, they're horses.

25 That's not acceptable. This a case about finances.

Summation - Brafman

5367

1 This is a case about, Is the investor a sophisticated
2 investor? Not that it matters one way or another, but you
3 need to know if he's paying attention or if he's lying to
4 you.

5 How does that work, ladies and gentlemen? How does
6 that work that you can come in here and essentially tell a
7 group of New Yorkers in front of a federal judge and talk to
8 a lawyer with the Government sitting there and basically
9 answer questions in a nontruthful fashion, that
10 the Government may say in their rebuttal summation, Well, you
11 know, what does it matter? How does it -- what does it
12 matter? He describes himself as a con man? That matters.
13 That matters a lot if the man I'm -- that's accused of -- of
14 defrauding tells people that he's a con man?

15 And what -- what does he tell you? He invested
16 \$1,250,000. He's the biggest earner and the biggest
17 investor, I think. Darren Blanton invested \$1 point --
18 \$1,250,000. He got 160,000 Retrophin shares and then he got
19 another 200,000 Retrophin shares. He got cashed out -- the
20 value of his shares he got for \$2.6 million, and he still has
21 150,000 Retrophin shares. This is a person who's been
22 deprived of the use of his money by my client so that you
23 should convict him of a felony? This is a man who is sitting
24 on 150,000 shares of Retrophin today watching the ticker
25 symbol go up and up and up. A company Martin Shkreli

Summation - Brafman

5368

1 started.

2 And Darren Blanton tells you, Oh, yeah, I would
3 have liked to know. I would have like to know if
4 Elea Capital blew up. That's rich-man BS. Do you know why?
5 Because he hired his brother investigate Martin Shkreli, and
6 those judgments are in the investigator's report and he
7 ignored them. So when they say to you, Yes, would you have
8 liked to know? That is such an unfair thing to do in 2017.

9 You invested in 2014. Why? Because Martin Shkreli
10 was making me a fortune. I was listening to his stock tips
11 and I was making millions of dollars. And when he blew up --
12 when he drew up MSMB, I went in, I was happy I went in and I
13 made \$5 million.

14 Now it's 2017 and you're in court. Martin
15 Shkreli's accused of fraud. What do you need to say in order
16 to get out of here? I needed to say that I wanted to know
17 all of these things before I invested. No, you didn't. Not
18 at the time you made the investment. All you cared about was
19 the fact that Martin Shkreli was hitting one home run after
20 another.

21 Now, they tell you, and this is really interesting,
22 and I hope you will just follow me for a minute. They tell
23 you that Darren Blanton is one of the people who got an
24 illegal sham consulting agreement, right? He's one of the
25 people. They say he got an illegal agreement consulting

Summation - Brafman

5369

1 agreement and Yaffe got an illegal consulting agreement.
2 It's a cluster headache there. He gave us all a headache,
3 but I will deal with him soon. But Darren Blanton, Darren
4 Blanton is the other person who they claim ending up getting
5 all of this money in a sham consulting agreement. That's not
6 true. You can call it sham now, but look at this exhibit.
7 This is Exhibit 452 -- I'm sorry, Exhibit -- Defense
8 Exhibit 4352.

9 And it starts on the bottom: "Martin, good talking
10 to you Friday, and I look forward to seeing you in the next
11 couple of week. I appreciate you sending me the 400,000
12 shares of Retrophin over the last few months for my initial
13 role and investment in the company, and I hope I can help you
14 make it an even bigger success as a consultant."

15 And Martin writes back: "Yes. I have been talking
16 it up to the banker at -- I'm sorry -- and me writes again,
17 "I've been talking it up to the banker at Leerink loves you
18 and so does Lawrence at Prosite. You might talk to them
19 about your deal and also maybe think of a creative loan
20 structure where they can get some shares."

21 You don't have to be a consultant who goes out and
22 work for the company and investigates new products. Darren
23 Blanton is a big-shot investor who knows other rich
24 investors. Schuyler Marshall and John Neill came in through
25 Blanton. Blanton tells you in May 19, 2014 that he's looking

Summation - Brafman

5370

1 forward. I hope I can help you make it an even bigger
2 success as a consultant. This isn't Martin Shkreli telling
3 him you got to make believe you're a consultant, and I'm
4 going to give you an agreement that the Government is then
5 going to point to and say, This is a sham. This is May
6 of 2014 when Darren Blanton is obviously trying to get his
7 money back and Martin and he agrees that he's going to be a
8 consultant. "I can help you make it an even bigger success
9 as a consultant." Darren Blanton uses those words. Martin
10 Shkreli's not using those words. Martin Shkreli has a right
11 to bring consultants into mix on behalf of Retrophin so that
12 Retrophin can become a bigger company; so that Retrophin can
13 make bigger investments so that they can find bigger markets.

14 We'll go to Yaffe in a little while. But Yaffe,
15 Yaffe was a partner in Leerink Swann, remember? Leerink
16 Swann, which was the big investment house. He's been in the
17 pharmaceutical industry his whole life as an investment
18 advisor. And what does -- what was the -- what does Darren
19 Blanton say to him? "I've been talking it up. The banker at
20 Leerink loves you. How is that a coincidence? Leerink?
21 That's Leerink Swann. That's the investment house that Yaffe
22 used to work. He helped found it, and his friend Swanny is
23 now running it.

24 Darren Blanton is not a sham consulting agreement.
25 That's a real consulting agreement. And now I questioned him

Summation - Brafman

5371

1 about that e-mail, and I said to him, and here's his
2 testimony. And when say you'd follow him, he had lots of
3 clients and contacts?

4 Answer: Yes.

5 And you were describing Martin Shkreli in May of
6 2014 as a creative CEO?

7 Yes.

8 You weren't describing Martin Shkreli in 2014 to
9 those investment bankers as someone who scammed you, were
10 you?

11 Answer: Well, we had done an agreement where he
12 [sic] released each other and he had paid me those shares.

13 Question: So all was forgiven?

14 Answer: Well, that's the purpose of a release,
15 isn't it?

16 Do you see what he said? "That's the purpose of a
17 release."

18 They tell you it doesn't matter to get a release.
19 It matters to get a release, because if you were a new
20 company and someone wants to sue you, even if it's not a --
21 or each if it's not a real claim, if you get a release from
22 someone like Darren Blanton so you can avoid litigation?
23 Mr. Aselage told you that companies want to avoid litigation.
24 And sometimes the cost of litigation is more expensive than
25 what you're litigating about, so you settle. You give

Summation - Brafman

5372

1 somebody a release. That's common sense. People settle out
2 of court all the time. Not all claims are valid. But he
3 gave them a release. And when questioned in 2014 in this
4 courtroom under oath, he's talking about his reaction in
5 2014. That's after he claims Martin Shkreli scammed him.
6 Well, we entered into an agreement. We got a release.

7 And you know what else is so sad, ladies and
8 gentlemen? This does not show up in the PowerPoint. This
9 does not show up in the Government's PowerPoint. And I don't
10 know how to do a PowerPoint, but I know how to look at
11 documents.

12 Here is the Retrophin proxy vote. Look at this,
13 105-41 into evidence -- in evidence. That's a Retrophin
14 proxy statement. Look at this. Look at this. Just so
15 outrageous. Darren Blanton is signing it on May 7th, 2014.
16 And what is he doing? He's voting for Martin Shkreli to
17 remain on the board of directors. This is after he claims
18 Martin Shkreli perpetrated a fraud. Why is Darren Blanton,
19 a -- one of the big investors in Retrophin, why is he voting
20 for Martin Shkreli to stay on the board?

21 And look at this.

22 Question: And the first person who is listed as
23 someone that the company wants as their director is Martin
24 Shkreli, correct?

25 Answer: Correct.

Summation - Brafman

5373

1 And you voted for him, didn't you?

2 Answer: Correct.

3 And you voted for Martin Shkreli to be director of
4 Retrophin almost three years after you had concluded that
5 Martin Shkreli, according to you, lied; is that correct?

6 Answer: Correct.

7 Question: And according to you almost three years
8 after you had concluded that Martin Shkreli had committed a
9 fraud on you, correct? And yet in 2014, rather than either
10 abstaining or voting against Mr. Shkreli because of what you
11 claim to have been a fraud, you voted in favor of Martin
12 Shkreli? And when you asked -- when they asked you in 2014
13 to approve a slate of people who are going to run this
14 company that you had a substantial amount of shares in, you
15 voted in favor of Martin Shkreli?

16 Answer: I voted in favor.

17 Ladies and gentlemen, they're talking about
18 securities fraud. They're telling you that the shareholders
19 of Retrophin have been defrauded by Martin Shkreli. This is
20 the one of the big shareholders of Retrophin after he had
21 his differences with Martin Shkreli, after he believes
22 Martin Shkreli lied to him, after he believes Martin Shkreli
23 scammed him. What's he doing? He's voting to keep Martin
24 Shkreli as the director. You cannot ignore that piece of
25 evidence.

1 That piece of evidence I submit most respectfully
2 alone should cause you to hesitate when you decide whether
3 or not the Government has proved beyond a reasonable doubt
4 that Martin Shkreli committed securities fraud because it's
5 not consistent with reasonableness.

6 A reasonable doubt in part will be defined as a
7 doubt that will cause you to hesitate in a moment of serious
8 consequence in your own lives. It's not a whim or a
9 caprice. A reasonable doubt, a doubt for which you can give
10 a reason.

11 Here's a reason. I don't believe Darren Blanton's
12 testimony when he said that Martin Shkreli scammed me
13 because in 2014, long after it happened, he voted to keep
14 Martin Shkreli as a director in Retrophin, which I had a
15 vested interest in; I am a shareholder; I am telling you
16 Martin Shkreli should run Retrophin. They can't get away
17 from that. They can't explain it, and you cannot ignore it.

18 (Continued on next page.)
19
20
21
22
23
24
25

1 MR. BRAFMAN: Now listen to this please, ladies and
2 gentlemen, this is testimony that they have ignored
3 purposely, I submit, but you can't.

4 This is Blanton's cross-examination. My
5 cross-examination, the cross-examination that I think you
6 should look at before you decide to pull the trigger on
7 someone's life because it's as valuable as the direct
8 examination. They are both under oath. Here is the
9 cross-examination. I wrote the green that's not part of the
10 green.

11 "Question: Among other things you told them that
12 Martin Shkreli had told you that the appropriate valuation of
13 Retrophin stock would be \$20 a share?

14 "Correct.

15 "At that point it would be worth \$20 a share?

16 "Yes.

17 "That was said by Martin to you years ago, correct?

18 "Correct?

19 "What is the value today, \$25 a share?

20 "Answer: Yes.

21 "He was pretty prescient, wasn't he?

22 "Yes."

23 Prescient means, I think I'm using it right, you can
24 see into the future. Aselage saw him as a visionary. It
25 doesn't mean you can see into the future, that means he can

1 see things that we don't. A visionary is someone who -- I
2 have a phone, where I can press a button and in a second I can
3 speak to my son on the other side of the world and I hear him
4 clear as a bell. I don't know how that happens. Do you know
5 how it happens? Some genius figured that out. I don't
6 understand that, that's way above my ability. I'm not a
7 scientist. Even if I was, I could not make a phone work and
8 let me talk to you 7,000 miles away. Some visionary made it
9 work.

10 There are people like that in every generation.
11 This visionary made a pharmaceutical company that treats rare
12 children's diseases; started from nothing and turned it into a
13 real company. Now these vaccines and drugs are being
14 produced, only because of Martin Shkreli. You can't ignore
15 that.

16 Then Blanton gives you the out for anything you want
17 to do in terms of acquitting the defendant, if you question
18 his valuation. Because when he says, my cross-examination:

19 "Did you tell the FBI that your value of Colt
20 Ventures was between 25 and \$75 million?

21 "Answer: I could have.

22 "Well, what was the value of Colt Ventures at that
23 time.

24 "I would say that's a pretty good range.

25 "How did you value something that has a \$50 million

Summation - Brafman

5377

1 spread? You can't be more specific?

2 "Answer: Because of public and private investments.

3 "Question: And because the private investments are
4 very difficult to value on certain occasions, correct?

5 "Answer: Correct."

6 Isn't that what Martin Shkreli did? And which the
7 Government seeks to ignore. Didn't he properly value
8 Retrophin when it was a private company in its infant stages.
9 Retrophin doesn't show up like a bag of potato chips.
10 Somebody cultivates the idea. Some brain works on it for two
11 years. And then, then if everything works perfectly, you
12 might be the smartest person of the generation, then maybe the
13 FDA approves your drug, and maybe, maybe, maybe it's a
14 success.

15 He did it. Don't you understand, he did it. He did
16 this.

17 That requires you to understand how special his mind
18 is and how careful you need to be before just tossing it in a
19 heap.

20 This is my favorite part, I'm going to repeat it.

21 "Did you say at the time when you were young after
22 your parents divorced, that it caused you to become a little
23 bit, a little bit of a renegade?

24 "Answer: That was her rendition of what I said.

25 "Question: Well, did you say that you had good

1 conversational skills, but that you used them to get yourself
2 and others into trouble or to con people out of something?

3 "I think that's what she wrote. The media doesn't
4 always write exactly what you say.

5 "Question: Right. And what did you say?

6 "I don't remember.

7 "Question: What did you say that caused her to use
8 the words con man?

9 "Answer: I have no idea."

10 But you know what, ladies and gentlemen, everything
11 Martin Shkreli said, every word that came out of his mouth,
12 they are now suggesting to you is evidence that he committed a
13 fraud. Every e-mail, every time you hit the word send on your
14 Blackberry or iPhone or whatever device, it's forever.

15 Here is the question, I'm going to take all of your
16 e-mails, all of your e-mails for the last four years, I'm
17 going to find 20 of them to embarrass you. Twenty of them
18 where you said something about someone you love or care about
19 or don't like or do like, and you said it and it was stupid,
20 you regret it, but after you hit send you can't take it back.

21 What did Darren Blanton say to this woman that
22 caused him not to just say con man -- listen to the whole
23 sentence, it's so important in a criminal case where he's a
24 Government witness. "You had good conversational skills but
25 that you used them to get yourself and others into trouble, to

Summation - Brafman

5379

1 con people out of something." He has good conversational
2 skills, you saw him. He's using them to get Martin Shkreli
3 into trouble. He's a con man. And he can't explain it. If
4 you don't say that to a reporter, it doesn't come out this
5 way. Maybe they make mistakes sometimes, but this is a very,
6 very big mistake. They are publishing it in a widely read
7 magazine in Dallas, Texas.

8 Your Honor, if we could take a break for five
9 minutes, Judge? If we could have an understanding, your
10 Honor, of when we will break today, that will help me.

11 THE COURT: Let me ask the jurors. Can you stay
12 until about 5:15 or 5:30?

13 (Jurors indicate.)

14 MR. BRAFMAN: Thank you very much.

15 THE COURT: Please don't talk about the case, keep
16 your minds open.

17 (Jury exits the courtroom.)

18 THE COURT: All right. Is ten minutes sufficient,
19 Mr. Brafman?

20 MR. BRAFMAN: Yes, your Honor.

21 THE COURT: Ten minutes, please.

22 (Whereupon, a recess was taken at 4:20 p.m.)

23 * * *

24 (Jury enters the courtroom.)

25 THE COURT: All our jurors are present. Have a seat
everybody.

Summation - Brafman

5380

1 Mr. Brafman, you may continue.

2 MR. BRAFMAN: Thank you ladies and gentlemen for
3 listening. I'm going to try to finish before 5:30 if I can;
4 if I can't, I'll see you tomorrow morning.

5 John Neal, John Neal came from Texas. He was in
6 this case because of Darren Blanton. And he went to a dinner
7 meeting in Texas. He met Martin Shkreli and Gloria Euclid,
8 who you may have heard, but never saw, was talking about how
9 great Martin Shkreli was and how much money she made, and
10 Darren Blanton said how much money he made. That prompted
11 Mr. Neal's investment, he didn't read the PMM. He signed the
12 subscription agreement in which he verified to Martin Shkreli
13 that you read the Private Placement Memorandum. He told you
14 he didn't read. He's in a hundred hedge funds, he knows what
15 they say, he didn't read it.

16 This is not science. It's not business knowledge.
17 This is every day stuff we deal with. You have your kitchen
18 redone. You have a contractor who gives you a contract. You
19 sign it. You pay him. He does the kitchen. You come back
20 from vacation, you say, I didn't pick out that kind of marble,
21 what are you doing? He says, read the contract, you did.
22 Well, I didn't read the contract. He says, you should have
23 read the contract.

24 It's not fair. It's not fair not to read the
25 contract then complain because you didn't know about certain

1 things that it says in the contract. When you sign a private
2 placement subscription agreement that says I read the
3 contract. I discussed it with my lawyer or my investment
4 adviser. I know everything in it. I don't have any
5 questions. I'm prepared to take the risk. You are taking the
6 risk; when you don't read it, you're taking a bigger risk.

7 That is not right, ladies and gentlemen. You cannot
8 ignore the written materials then come back and say, well, if
9 I had known. If you read it, you would know. They don't care
10 what is in there.

11 To the extent it says I Rothstein Kass as my
12 auditor, do you think Martin Shkreli picked that name out of a
13 hat? What you are auditing in the first three days of your
14 private placement, new business? This is someone who might
15 audit when they do the audit. There is no audit that is done.

16 I didn't say I had the MSMB audited by Rothstein
17 Kass, I said they are my auditor, but there was no time to
18 audit after the RX trade and he turned it to into MSMB.

19 Schuyler Marshall, again, a businessman from Dallas,
20 in the case because of Darren Blanton. And after the meeting
21 with Darren Blanton, he doesn't invest right away. He waits
22 two months. During the two months, you know what he does, he
23 gets stock tips from Martin Shkreli. He watches their
24 performance. He tells you that everything Martin Shkreli told
25 him turned out to be right. It's in the testimony. You can't

1 just ignore that. That's why he invested. He's not relying
2 on what Martin Shkreli said in the memo. He's relying on what
3 Martin Shkreli is telling him about stock tips; what Blanton
4 is telling him; what Neal is telling them; and what Gloria
5 Euclid is telling him. He's a sophisticated guy, a lawyer for
6 40 years, 25 years as a partner in a big firm. You can't just
7 ignore that, ladies and gentlemen.

8 Then look at this, remember I told you these rich
9 people don't know how much money they make. He tells you on
10 direct examination he got the shares and he sold them for two
11 or \$3 a share in January 2014, that's his testimony. He said,
12 well, I made about 40 to \$100,000. No, he didn't. We had in
13 evidence what the stock was selling for in January and
14 February of 2014. Do you remember when I confronted him with
15 the Yahoo finance pages? The stock was selling between \$7.18
16 to \$17 a share. He looked at it and he said, I guess you're
17 right, those numbers are correct.

18 Well, if my numbers are correct, you didn't make
19 between 40 and 100,000; you made between 264,000 and \$674,000.
20 He said, I'll accept your numbers.

21 What are we doing? What are we doing? He said
22 under oath 40,000, now it's 264,000. He said 40 to 100, now
23 it's 260 to 674. And in a minute he realizes he screwed up.
24 I'm not calling him a lawyer. But if I didn't do any
25 cross-examination you would think, well, this guy really

1 didn't make many money, Brafman is wrong, not everyone double
2 and tripled their money.

3 He made a fortune only when I pointed it out that he
4 ultimately accepted my number. It's not okay. It's not okay,
5 because these numbers of what the Yahoo finance are stipulated
6 to between the Government and us. There is no dispute about
7 what the stock was selling for in January of 2014. You can't
8 just ignore that.

9 This is my favorite testimony, I'm sorry, my
10 favorite testimony.

11 "Do you remember telling Mr. Shkreli in words or
12 substance you received a letter from Eric Schmidt of the SEC
13 asking you to come in for a voluntary interview?"

14 Further on, "You notified Mr. Shkreli about the
15 contact with the SEC, and Mr. Shkreli encouraged you to go in
16 and tell the truth, didn't he?

17 "Answer: In substance, yes.

18 "Question: That you should go and cooperate fully
19 with the SEC and provide them any information to resolve the
20 interview?

21 "I believe that's correct.

22 "And when you asked Mr. Shkreli whether or not you
23 should tell them, that you should ask whether SEC understands
24 the no harm no foul concept, did you say that to Mr. Shkreli?

25 "Yes, I did. What I meant by that I was trying to

1 give them some encouragement. At this point I felt that even
2 though it had taken a long time, he had ultimately paid back
3 my investment, and then some. I appreciated it. And I heard
4 that he did that, in fact he was trying to deal similarly with
5 all other investors. My point here was that I had not been
6 harmed in terms of losing money; in fact, I made money.
7 That's what I meant my no harm, no foul." Page 2595 of the
8 transcript.

9 You cannot convict Mr. Shkreli of defrauding
10 Mr. Schuyler, Schuyler Marshall, you can't. He is telling you
11 he didn't lose any money.

12 If Mr. Shkreli said to Schuyler Marshall, if the SEC
13 calls and go and lie, the Government would bring that in here
14 as consciousness of guilt. When he tells him to go to the SEC
15 and tell the truth, why isn't that evidence of Mr. Shkreli
16 having a not guilty mind set? That came out on my
17 questioning, ladies and gentlemen.

18 Even though he was their witness, David Geller is Al
19 Geller's brother. David Geller had nothing to do with Martin
20 Shkreli. It was Kevin Mulleady and Al Geller that caused him
21 to invest. David Geller did not read any of the two PPMs. He
22 said, "I briefed them." He was the man that used the word I
23 "briefed" it. It's a 90-page document. What does that mean,
24 he looked through it? It's complicated. You can't brief it.

25 He said, I've been a trader my whole life. I'm

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1 versed in the stock market. I'm a trader by profession. This
2 isn't a guy who is just, you know, running a drug store and
3 has no experience and you bring him into a hedge fund and
4 suddenly he doesn't know what the hell is going on.

5 Yes, my client gave him a little bit of aggravation.
6 You saw this guy as a relatively nice man, white hair had one
7 of these Ralph Lauren Polo shirts on each day. First day a
8 blue one, second day a gray one. And you know what he said,
9 he said, "Man, I'm on a cliff, Martin. I'm on a cliff."

10 I got a guy who is suffering from anxiety and
11 depression being told by another crazy, "I'm on the cliff,
12 Martin. I need my tomorrow."

13 He couldn't give him the money tomorrow because he
14 was building a pharmaceutical company. When we understand
15 that this is not a client who ask going to hell I'm not going
16 to pay you, he's trying. He says to them in the e-mail, "I'm
17 crazy nuts here." That's true. He's crazy nuts, does that
18 mean he's crazy nuts or crazy nuts busy? Either way, he's not
19 doing a crime when he says that.

20 Now, every case has a witness. And you know, you
21 live your life as a trial lawyer, you wait ten years to find a
22 Lee Yaffe. I'm going to bring you to Lee Yaffe from a couple
23 of days ago. After the testimony was done I think the
24 Government threw in the towel and said no more witnesses. No
25 more witnesses after Lee Yaffe. We were supposed to go

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1 another two weeks, no more witnesses after Lee Yaffe. We
2 can't afford another spectacle after Lee Yaffe, that's my
3 suggestion that that's what happened. Lee Yaffe is the
4 cluster headache guy, remember him? He's the man who was
5 picked to do the work of cluster headaches. He said, I never
6 did a cluster headache work. I'm not a cluster headache guy.
7 I don't know about cluster headaches. My consulting agreement
8 is a sham. No, it's not. No, it's not.

9 He was supposed to do the work, he never did that
10 work. That doesn't mean Martin Shkreli couldn't expect him to
11 do the work. If I am Martin Shkreli and I say to Marek
12 Biestek, Lee Yaffe, who spent his entire life in the
13 healthcare world, who has worked in the healthcare investment
14 advisory world for the last 25 years, who now runs these
15 medical clinics for substance abuse, he's the perfect guy to
16 do research in cluster headaches, give him the job. Marek
17 Biestek says, yes Martin. Martin is the CEO. He's developing
18 the medicine and delegating to Marek Biestek.

19 By the way, he's the MB in MSMB. Do you see him in
20 this case? Do you sitting next to Martin? Why? He's not
21 Martin Shkreli. Because he's not vulnerable. He's not easy
22 to prosecute. He's the MB in MSMB, and he's getting a pass, I
23 suggest; not a witness, not a defendant. Why?

24 And Marek Biestek is given this assignment. Either
25 Marek Biestek screws up or Lee Yaffe screws up. Lee Yaffe is

1 lying to you. You know how you know that Lee Yaffe is lying
2 to you because at the end of the day he said to you on direct
3 examination, I never did any work on cluster headaches. I
4 never spoke to Martin or Marek about cluster headaches. It's
5 not true.

6 On cross-examination we got him to admit, he started
7 to admit to having conversations with Marek Biestek. He
8 started to admit, and suddenly then he said, I had only had
9 one two-minute call. This is what he claimed. Read his
10 testimony. This the longest two-minute call in the history of
11 mankind.

12 When did you tell the FBI that you knew that
13 Retrophin was working on two drugs involving cluster
14 headaches? I don't know. I must have told them. It says it
15 there, I must have told them.

16 When did you tell them? In that telephone call.

17 When did you tell the FBI that you got back the
18 information from Marek Biestek. I don't know, I must have
19 told them on the phone call.

20 Did you know you were getting a packet of
21 information, they must have said something. When did they say
22 something? On the phone call.

23 How did you know that a cluster headache is a
24 migraine headache in the ninth degree? Do you remember when I
25 asked him that question? He said he might have found out on

1 the phone call.

2 Man, this is some two-minute phone call. A
3 conference call with Martin Shkreli and Marek Biestek and Lee
4 Yaffe, hiring this guy to be a consultant in cluster
5 headaches. And everything he learned about it is being said
6 on there; is that correct? No.

7 I'll tell you why he's lying. Yes, we can't prove
8 this phone call happened. We can't prove that that's when he
9 was talked about cluster headaches. But you know what we can
10 prove, we can prove beyond any doubt whatsoever that this man,
11 Lee Yaffe, was talking about being a consultant for Retrophin
12 with Martin Shkreli for months before he got his consulting
13 agreement.

14 Here is defense exhibit 106. On the top, "We'll
15 have this done tomorrow. Need to make changes we discussed.
16 Looking forward to your services and advice."

17 Okay, that's Martin Shkreli. So when he says
18 advice, he can say well, it's a self-serving statement by
19 Martin Shkreli. Well, let's see how this e-mail starts,
20 ladies and gentlemen.

21 This is Lee Yaffe to Martin Shkreli, "Cool. That
22 would be great and most appreciated. Dad should be rolling
23 into town shortly, so that would be huge. Let's catch up
24 tomorrow and also help you guys. I read all the recent press
25 releases so have some thoughts and ways I can help out. So

1 the value is recognized by giving me a shot on the consulting
2 side."

3 Ladies and gentlemen, please look to where I'm
4 pointing. This is a reasonable doubt as to why you should
5 acquit Mr. Shkreli and reject that consulting agreements as
6 being a sham. He is telling Martin Shkreli that he's grateful
7 for getting a shot on the consulting side. What is he talking
8 about? Then look at the rest of the email.

9 "Let's see if we get buttoned short-term. As know
10 you are busy, needs to get done. Then I want to pull Swanny
11 into the mix. He can help you guys. Will fill you in when we
12 speak."

13 Swanny is Leerink Swann, a partner of the healthcare
14 fund. He is the person who is going to help Retrophin, who is
15 going to help Yaffe be a better consultant. What is he
16 telling him? You can't just ignore this. It's an defense
17 exhibit, but he identifies as a consulting e-mail. He's using
18 the word consulting. "I'm going to consult with you."

19 Then what happens on the cross-examination, what
20 happens to this man who swore under oath an hour before, "I
21 never did any work as a consultant cluster headaches. I never
22 got any materials on cluster headaches. God bless you, I'm a
23 sham consultant." No, he's not.

24 Exhibit 100, is the e-mail from Martin Shkreli
25 copied to Marek Biestek. All he says is thanks. What is

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1 Martin Shkreli thanking him for? Look at the next page.
2 Marek Biestek, who has been assigned by Martin Shkreli to
3 supervise this cluster headache consultant writes to our guy
4 Lee Yaffe, God bless him, and he sends attachments, neurology
5 serotonergic agents.

6 And then I go through them with him. Suddenly
7 begins to back and fill, he doesn't know what to do. Suddenly
8 he realizes that he really was a consultant. He really did
9 some work. He realized, that yes, he defrauded Retrophin.
10 You know why, he never did his job.

11 Now please understand this, it's a sham consulting
12 agreement as far as Martin Shkreli is concerned if Martin
13 Shkreli had no intention of hiring this person as a
14 consultant; and therefore, they were using Retrophin money to
15 pay this person, who really wasn't a consultant. But if he
16 was really going to be a consultant for Retrophin, it's a real
17 business undertaking. It's a real business expense. It's not
18 a crime. And the public company can hire consultants. Steve
19 Aselage told you that. So if this is real, if he wanted Marek
20 Biestek to pay him so he could be a consultant, and then
21 Mr. Lee Yaffe decided to take the money and not do the work,
22 he owes Retrophin the money. It's not a fraud by Martin
23 Shkreli.

24 You can't just ignore this packet of materials.
25 They are in evidence, ask to see them. They are all

1 scientific journals. He says, I'm not an expert in cluster
2 headaches. He works in the healthcare industry. He told you
3 he had over a thousand business contacts, I'm developing the
4 drug for cluster headaches. You don't have to be a scientist,
5 I need you to be salesman. I need you to get me healthcare
6 companies who will underwrite a drug. That's what a
7 consultant under these circumstances does. He doesn't have to
8 be a specialist in cluster headaches.

9 It's not a crime hiring him to do a job for
10 Retrophin that helps Retrophin earn money. It's only a sham
11 agreement if there is no agreement for you to work. You can't
12 just check the box and say Martin be damned.

13 This is hard. You need to dig down and understand
14 that what I'm doing is what you're going to have to do, if you
15 even think of convicting Mr. Shkreli. This is real evidence.

16 I'm going to show you something which should even
17 make it worse for you to accept Lee Yaffe, then I'll talk to
18 you about it in a minute.

19 Lee Yaffe tells you, first thing he tells you, when
20 he met the FBI on April 1st, I think, in his driveway. I got
21 that. Two FBI agents showed up. I've had it. I lied. What
22 did I say? I said I was a consultant. I said I worked on
23 cluster headaches. I said I know all about Retrophin's work
24 on cluster headaches. I've had it. I just made up stuff
25 because the FBI was there.

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1 Well, how come everything you made up is right? How
2 is it that everything you made up, you ultimately understand,
3 turns to be true. Well, I panicked.

4 Now of fast forward to April 20, Eastern District of
5 New York. He has his own lawyer in the room. He has his own
6 lawyer, there is no more panic. He knows he going there. He
7 tells on cross-examination, I told the FBI at that meeting I'm
8 not here to lie. That's what he told them. And that's what
9 he does. He tells the truth. Right?

10 Well, he says, I worked on cluster headaches. I was
11 hired to be a cluster headache consultant. Is that a lie?

12 Two weeks later he said, I lied again to the FBI.
13 Now they're telling me if you lie to an FBI agent, it's five
14 years in prison. And if you take a phony consulting agreement
15 it's securities fraud and then 20 years in prison. What does
16 Lee Yaffe do, he gets a non-prosecution agreement.

17 Do you want to go through door one, and be on team
18 America and get a pass and no prosecution? Or door two, and
19 sit here facing life in prison if you're Lee Yaffe and you
20 committed these crimes intentionally. What would you pick?
21 You pick the Government's door. And what does he get, he gets
22 a non-prosecution agreement.

23 So this is in evidence, and now I can do this. I
24 waited a long time to do this. I want you to look at the
25 language. You think he has to tell the truth, that's what he

1 says, my agreement requires me to tell the truth. Let's see
2 the language that's used.

3 This is Defense Exhibit 105. It's a Government
4 non-prosecution agreement, but I'm the one who put it into
5 evidence. Here is the language on Paragraph B -- Paragraph
6 five, "The witness must at all time give complete, truthful
7 and accurate information and testimony, and must not commit or
8 attempt to commit any further crimes. Should it be judged by
9 the Office" -- which is the Government -- "that the witness
10 has failed to cooperate fully, has intentionally given false,
11 misleading or incomplete information or testimony, has
12 committed or attempted to commit any further crimes" -- we go
13 down -- "the witness will be subject to prosecution for any
14 federal criminal violation of which the Office has knowledge,
15 including but not limited to the criminal activity described
16 in Paragraph 2 above perjury and obstruction of justice."

17 Here is the test, should it be judged by the Office
18 that the witness has lied? Here is the test whether he gets
19 this agreement and he keeps it. The people at this table, the
20 Government, who want him to say he was a sham consultant, who
21 scared him into signing this, are going to make the
22 determination as to whether he's truthful. If they decide
23 that he's being truthful, he gets the benefit of this
24 agreement. So here's my question, what if he lies, but they
25 believe him? He gets the agreement. What if he tells the

1 truth, but the Government doesn't believe him? He doesn't get
2 the agreement. He gets prosecuted.

3 We're not talking about the truth. We're talking
4 about the truth from the subjective perspective of the
5 Government who is prosecuting this case under the theory that
6 this consulting agreement was a sham and anything he says to
7 the contrary is not going to be acceptable.

8 And you know what else is interesting how all of
9 these things sort of manage to wind their way into the same
10 corner of this case, he must have passed this quickly and
11 maybe he didn't focus on it. Let me focus you on it.

12 Lee Yaffe says to you he knows Josiah Austin,
13 remember the tall man, the rancher with the white hair. He
14 testified early on in the case. Very regal looking man, tall,
15 thin, from Texas. He was with Martin Shkreli. Martin Shkreli
16 was, we submit, helping him invest Chelsea Pharmaceuticals.
17 He had \$30 million invested in Chelsea Pharmaceuticals, so why
18 is Lee Yaffe important?

19 We take the position, and we've taken the position,
20 that Martin Shkreli says to somebody, I have \$35 million under
21 management, that that doesn't mean he has \$35 million in the
22 fund. Assets Under Management has never been defined for you
23 as a legal term. I believe I'm managing \$35 million. It just
24 so happens that \$30 million is Austin's money. And I, Martin
25 Shkreli, have told him how to invest in Chelsea. Why is that

1 important, even though Austin said I didn't consider Martin
2 Shkreli managing my money. It's not whether Austin considers
3 him managing his money; it's whether Martin has a right to
4 believe that he's managing his money.

5 What does Yaffe say? Yaffe says, I knew Josiah
6 Austin. My company invested in Chelsea Pharmaceuticals. I
7 know that Austin was the most important investor, the biggest
8 investor in Chelsea Pharmaceuticals. And if you read his
9 testimony, you will find that he says, he says under oath to
10 me when a question him, that I believe Martin was running
11 Josiah Austin's money. Because he was at Leroy Swang during
12 the period in question.

13 (Continued on next page.)
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Summation - Brafman

5396

1 MR. BRAFMAN: Because he was at Leerink Swann
2 during the period in question, an investment vehicle, do what
3 you want with it. Austin sells some -- transferred some
4 investment. You can't just ignore that. They say, Well, he
5 said Austin is under management, it's only \$5 million. That
6 \$30 million from Josiah Austin, Martin Shkreli has a right to
7 say I had it under management. Because Austin tells you that
8 the brokers were calling him to ask him to have Martin
9 Shkreli stop calling me about your money.

10 Because Martin Shkreli, I think call him impulsive,
11 they call him a little bit strange. He can get under your
12 skin. He can call you 30 times a day, people have said.
13 We're not calling you for 30 day. So the brokers tells Josiah
14 Austin, Tell Shkreli to stop calling me.

15 Now we get to Steve Aselage and Steve Richardson.
16 He tells you that by September of 2014, the board, the board,
17 the board is him and Richardson and Shkreli. That's the
18 board. Nobody else matters. Nobody else has testified that
19 they're on the board. These two guys are the board.

20 The board fires Shkreli. They said they didn't see
21 a change in his behavior. And when he testified to this, to
22 be perfectly candid with you, he's sitting in a courtroom in,
23 you know, the year 2017, I was kind of stunned that someone
24 would actually admit to this. So what does he tell you? He
25 says, Can you give us an example of a red flag as being a

Summation - Brafman

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1 party that Martin threw for Retrophin? Did you tell the FBI
2 that this was a red flag because there was a rapper present?
3 Yes, sir, I know what a rapper is. I'm old but I know what a
4 rapper is.

5 I recall Retrophin getting tickets and having a
6 number of employees sent to Madison Square Garden where a
7 rapper was performing. It would seem inappropriate.
8 Pharmaceutical companies historically send employees to
9 concerts, but a rap concert is not a destination that most
10 people would consider appropriate.

11 Who the hell are you? Who are you to the tell my
12 client, who's half your age and looks like he's half that age,
13 that he can't go to a rap concert, and if he goes to rap
14 concert, it's grounds to fire him.

15 What -- what planet are we on? This guy has the
16 right to tell my client that you are going to lose the company
17 you paid for because you went to a rap concert where you were
18 acting immature, he says, or you were on social media? This
19 guy is in a different generation. He's in a different world.
20 He's living in his San Diego mansion out there, and when he
21 comes to New York and he meets Martin Shkreli, he doesn't say
22 Martin's an idiot, he doesn't say Martin's a bad guy. He says
23 Martin went to a rap concert, you are fired. How dare you.

24 And doesn't that tell you something about the man?
25 Doesn't it tell you about his character. Isn't it telling you

1 something about him that would suggest to you that he has dark
2 heart. That he doesn't give him any room? You want to work
3 for, me you can't listen to that music. Well, yes, I can. I
4 started this company. I don't like your music, Mr. Aselage.
5 What are you listening to, the '70s? I'm allowed to go to a
6 rap concert.

7 You use Twitter, it's embarrassing the company. But
8 he also said a couple of things which he couldn't get away
9 from. He said Martin was a visionary. What's a visionary?
10 That's not a legal term. If you hit your Google dictionary,
11 it will tell you visionary is not someone who can see the
12 future, we're not talking about somebody who's a fortune
13 teller in a carnival. A visionary is someone who can look at
14 a protein and say I know how to turn this into a cure for
15 PKAN. He can look at a cell and understand what the cell is
16 missing to be able to develop myotubular muscular dystrophy.
17 Every generation has a couple of these people, thank God. So
18 that we take these vaccines and get these cures and our
19 children grow up. Those people were not believed when they
20 were young, like Martin. How do you know how to do this? I
21 don't know, I just know.

22 I can't go into Martin's head and teach you how he
23 became a visionary. You become a visionary because you're a
24 visionary. You're blessed with certain gifts. But is it
25 possibly for to you see a cure that nobody else has been able

1 to see. Our lives are filled with a couple of visionaries
2 that all of us rely on when we raise our kids. The people who
3 developed the polio vaccine, and all of the other vaccines we
4 give our kids. Those people were visionaries.

5 But the diseases that Martin Shkreli is trying to
6 find cures for are not looked at by major pharmaceutical
7 houses because they're offering drugs, like the testimony was
8 with respect to myotubular muscular dystrophy.

9 Josh Frase, who was the boy who just got to Martin
10 Shkreli brought to him, a boy who died of myotubular muscular
11 dystrophy, and Martin Shkreli said you know what, I think I
12 know how to fix this. I can fix this. But there are only a
13 few thousand people who suffer from this disease. So Pfizer
14 and Schering-Plough, God bless them, they are not going to
15 make a drug for something that only cures three, or four, or
16 5,000 people, or 20,000 people, there's no money in that.

17 In said to Mr. Aselage, You called him intense,
18 right? You called him a visionary? Yes.

19 Were there times when he was perhaps so intense that
20 you thought he was like crazy? Yeah, he alienated people
21 close to him by being so intense.

22 Was he able sometimes not to be able to control
23 himself? Yes, he was very impulsive.

24 How do you define his intellect? Unbelievable. The
25 smartest person I've ever met in my life. This is a man who

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5400

1 has spent 40 years in the pharmaceutical industry. Forty
2 years.

3 He left BioMarin where he made \$5 million a year to
4 go to work for Martin Shkreli who he met for an hour in a
5 coffee shop in San Diego? Why? Why?

6 What about Martin Shkreli is so overwhelmingly
7 impressive that you meet him, you think he's a little bit
8 crazy, but you decide you're going to go to work for him when
9 you're Steve Aselage who is running BioMarin.

10 You know why? Because when you're in that industry
11 and you see someone who you recognize has genius and you want
12 to develop a relationship because you see him as someone who's
13 going to be able to do what nobody else did, and he turns out
14 that he was right, and now Aselage is running Retrophin and
15 last year he made \$7 million, and Martin Shkreli is sitting
16 here being thrown out of that company because he went to a rap
17 concert. Are we nets? Is that acceptable? It's not
18 acceptable, I submit.

19 So he comes out to California, Mr. Aselage, for
20 three weeks, what happens? He stays in his hotel. You go to
21 California to stay in a hotel? People go to California for
22 the weather. He goes to California, he never leaves his hotel
23 room. So Aselage gets a little bit upset. He goes to see
24 him, and what does Martin say? I'm cutting my medication, I
25 think I'll be okay. That's his response. And I say to

Summation - Brafman

5401

1 Mr. Aselage, Did you ask him what was wrong? No, I'm not a
2 doctor.

3 You're not a doctor. He's your CEO. You're angry
4 with him because he went to a rap concert. He's locked in a
5 hotel room for three weeks taking medication and you don't
6 want to know what's going on in his life?

7 Going to a rap concert makes you nervous but when
8 he's taking medication in a hotel room locked in there that's
9 okay, that doesn't bother you.

10 And then Aselage said something else that you need
11 to understand. Sometimes companies decide to settle because
12 the cost of litigation is very expensive.

13 So I might settle, I might sign settlement
14 agreements if I'm the CEO of Retrophin because the cost to
15 Retrophin is worst. And if I'm the CEO of Retrophin and
16 you're an MSMB investor and you sue me, that's bad for the
17 company. It's a brand new company. The visionary genius who
18 started that company does not need to be sued. If you are on
19 the board of directors, you have a fiduciary obligation to
20 this company to see to it that there is no litigation if it
21 can be avoided. So you give people some money and you write
22 it off because it's cost effective.

23 And he said to me, the only way I get rid of Martin
24 Shkreli, and the only way we can rid of Martin Shkreli is if
25 he's now convicted of a felony. That's what he said. Hello.

1 What are we on trial for? Felony.

2 What happens if Martin Shkreli gets convicted of a
3 felony? Aselage and Retrophin wins their 65 million-dollar
4 lawsuit. That gives him a motive to try and bury Martin
5 Shkreli.

6 And you know, even though he tried, I think he
7 couldn't get away from the fact that there is some things
8 about Martin Shkreli that I think he had to admit. For
9 example, let me focus you.

10 Did you have any concerns that Martin Shkreli was
11 not being truthful to an investor? Listen to his answer.

12 I thought he was sometimes exaggerating a bit. I
13 don't think that's lack of truthfulness. I think he honestly
14 believes some of the things he is saying. I felt that some
15 thing he was saying were probably through rose colored
16 glasses, maybe more optimistic than was realistic to believe.
17 Isn't that the end of this discussion in some respects?

18 Steve Aselage, a government witness, not a fan any
19 longer of Martin Shkreli, tells you I think he believes what
20 he says when he says them. And he sees the world through rose
21 colored glasses. That's not bad. That's not bad. Maybe it's
22 naive, and maybe you don't see the real world sometimes, but
23 that doesn't mean you're intending to defraud. That doesn't
24 mean you're trying to commit a crime. That means that you
25 don't see the world the way everybody else sees it. And you

Summation - Brafman

5403

1 need to consider that when you decided whether Martin acted in
2 good faith. And you need to consider that maybe that's how
3 he's able to develop these drugs, because he doesn't see what
4 everybody else sees. He sees something special. He's
5 described as a visionary, and you can't shut that down. And
6 you can't escape it, and you can't walk away from it.

7 What did you do, Mr. Aselage, while you were on the
8 board? Well, you know, not much. Remember when I asked him
9 if he had a fiduciary obligation to the company? Yeah, I got
10 a fiduciary obligation to the company.

11 Were you on the board? Yes, I was on the board.

12 Did you pay attention to your responsibilities when
13 you were on the board? Yes, it's very important.

14 Oh, yeah, let me ask you: In July of 2013, when
15 your Retrophin -- when your title with Retrophin I was a board
16 member and you were talking to Christopher Schelling? Yes.

17 And this was during the period when you told the
18 jury you were taking your work seriously as a board member
19 answer?

20 A Yes.

21 "QUESTION: Did you tell Mr. Schelling on that date
22 that you're still filing around with Retrophin, although not
23 really spending in any serious time on them?

24 "ANSWER: That's what the email says. Yes.

25 You can't come in here and tell us and tell you

Summation - Brafman

5404

1 under oath that I am a serious Retrophin board member who
2 never approved these things and took my work seriously when
3 you're telling the rest of the world that you are farting
4 around as a board member. I apologize for the word, it's not
5 my word it's his word. And I apologize for saying it again
6 and again. But doesn't that tell you, in 2014, what he wasn't
7 doing as a board member? That he was not only asleep at the
8 switch, he just didn't care.

9 So when these settlement agreements and these
10 consulting agreements came before the board, they came before
11 the board. We have the agendas that were sent by, you know,
12 Ken Banta and Marc Panoff. They're all on his desk.

13 Those people weren't called. Marc Panoff is the CFO
14 of Retrophin wasn't called as a government witness. Ken Banta
15 isn't called as a government witness.

16 He's farting around as a board member, so he doesn't
17 see the consulting agreements. And I am Martin Shkreli and I
18 have an obligation to get this approved by the board, where,
19 quite frankly, there is no law that says that. There's
20 nothing in this case that requires me to send this to the
21 board, but let's assume I have that obligation.

22 So I send it to the board thinking they're reading
23 it. And little do I know that the main character is Steve
24 Aselage, who views his job responsibilities as just farting
25 around. I don't have to read anything, do anything. Nobody's

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5405

1 paying me a lot of money. I'm just hosting.

2 So I don't know that you're telling the world that
3 you're farting around. I think you're approving these
4 agreements. You know why I know? Because they're filed with
5 the SEC. And you're signing them. And the consulting
6 agreements and the settlements agreements are referred to in
7 those documents. I have a right as Martin Shkreli to believe
8 that the board has approved these agreements, because I sent
9 them to the board. The board signed them. They were filed
10 with the SEC.

11 And little do I know that 2017 you will finally
12 admit in open court that in 2014, even though you understood
13 the fiduciary obligation as a board member you really weren't
14 paying attention, you are just farting around.

15 You can't convict my client of sneaking this stuff
16 past the board. He didn't sneak it past the board. The board
17 didn't look at it because they didn't care.

18 So let me talk to you about Steve Richardson. And
19 I'm going to be careful here because I don't want to offend
20 anyone and I don't want to get in trouble.

21 Steve Richardson lied to you. That's what I submit.
22 Steve Richardson is the chairman of the board and Steve
23 Richardson came in here, and in the direct examination by the
24 government, I didn't bring this up on cross, Mr. Agnifilo
25 didn't bring this up in cross, in the direct examination from

Summation - Brafman

5406

1 the government, they started with right off the bat, Are you a
2 gay man? Yes, I'm a gay man. I have a partner. I've been in
3 a relationship for 25 years.

4 That's none of my business. I don't care whether
5 you're gay or not gay or straight or bisexual. I don't care
6 who you love. It's not about business, I said in my opening
7 statement, it's 2017.

8 (Continued on next page.)

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1 MR. BRAFMAN: That's not why I'm disgusted, it's
2 none of our business whether Steve Richardson is or is not
3 gay. I'll tell you when it becomes our business, when he
4 lies to you about his relationship with my client. When he
5 lies about his relationship with Martin Shkreli, then it
6 becomes relevant to you and relevant to me and relevant to
7 this case. So we confront him and, you know, you stand here
8 basically reasonably intelligent people and you listen to the
9 following: Did you tell Martin Shkreli in an email, I can't
10 wait to touch your soft skin again? Yes, I did, but I was
11 referring to the rash he had on his neck. And the government
12 shows an email with a subject matter is rash on my neck. So
13 here's his explanation. Martin has a rash on his neck, I
14 want to know if the rash is better and my response is I can't
15 wait to touch your soft skin. If you got that email from
16 Mr. Richardson you'd be freaked out by it. If you got it
17 from colleague and all you're doing is telling him I had a
18 cold, my cold is better, I had a rash, my rash is better and
19 his response is I can't wait to touch your soft skin again?
20 That's not an appropriate response I submit. He's not
21 telling you truth.

22 What did he tell you, Martin had sexual issues. He
23 didn't know if he was gay or not gay and I took him to my
24 apartment and I sat him down on my bed and I said, Martin,
25 you're in the bedroom of a gay man, you need to confront this

1 issue. What are we doing? He's old enough to be his father.
2 He's the chairman of the board for which he is the CEO and
3 then he fires him.

4 Then the email 10:00 o'clock at night, Martin, I'm
5 drunk, where are you? Who sends an email like that to someone
6 who you're not having a romantic relationship with? That's
7 like, Martin, I'm horny, where are you? That's what that
8 email is. I'm drunk, Martin, where are you? Why do you send
9 that to someone who is just working with you?

10 You did not get the truth from Mr. Richardson. You
11 know how we know that, because when Richardson gets found by
12 the independent commission of having a personal relationship
13 with Martin Shkreli, according to Aselage when they do the
14 investigation, he resigns, he's gone. The chairman of the
15 board, he wanted to be part of Retrophin, it was his legacy he
16 told you. Suddenly he's out of here.

17 You know, I don't know, there is so much that I can
18 say and there's so many ways I can say it, but I look at these
19 two characters and I'm saying to myself, how not fair. How
20 not fair. Forget the case for a minute. How not fair what
21 they did to Martin Shkreli. Yes, maybe he's not the proper
22 CEO because he's a little bit nuts. Maybe he could be given a
23 job as like head of scientific research. You don't throw him
24 out. He made the company you're all making yourself rich
25 from. Steve Aselage made \$7 million last year. \$7 million on

Summation - Brafman

5409

1 Retrophin. And Martin is sitting here fighting for his life.
2 And the only way they really get rid of him is if he gets
3 convicted of felony. And he comes in here as a government
4 witness and he tells you he never authorized these agreements.
5 That's such BS, ladies and gentlemen, it's such a lie that you
6 should be offended by it.

7 There is something else I need to touch on, and I'm
8 doing this as quickly as I can so that you don't stay past
9 5:30 and if I can't finish, I'll finish tomorrow, but here's
10 something you need to understand. You know, you commit a
11 fraud, that's what the government says. You rip off people
12 for millions and millions of dollars. Do you see any money
13 going to Martin Shkreli? Don't people who rip off people want
14 to do it so they can live the highlife, so they can buy their
15 Maseratis and the yachts and they can go on vacation. Martin
16 Shkreli took \$26,000 over two years and there is a 72,000
17 debit card, 72,000-dollar debit card bill two years. So a
18 total of \$108,000. The debit card includes, I submit,
19 everything that Martin Shkreli had to pay for including dinner
20 with Sarah Hassan, including traveling to Dallas to meet with
21 Dallas Club Buyers, including David Geller dinners, including
22 Al Geller dinners, including Kevin Mulleady dinners, all of
23 that is 72,000. So let's say 50 percent is Martin's. So for
24 two years he's sleeping in a sleeping bag. Steve Richardson
25 told you that he had to buy him clothes. Did you buy him

Summation - Brafman

5410

1 clothes because you felt bad for him? Did he buy him clothes
2 because he wanted to clean him up or dress him up? I don't
3 know. But he didn't have clothes. He slept in a sleeping bag
4 on the floor of his office. Who does that if you're
5 committing a fraud and you have millions of dollars of
6 investor's money.

7 Now Her Honor will charge you that it's not the end
8 of the rainbow if you don't find the money, but it's a fact
9 that you can consider. Most people commit crimes because
10 there is a greed factor. I want your money, I don't care how
11 I take it. I want your money because I want to buy things
12 that I can't afford. That didn't happen in this case. He has
13 no life. He's the hermit scientist sitting in an office and
14 sleeping there and occasionally going to a concert, which cost
15 him his company.

16 I want to talk to you about the back dating. The
17 government must have said the word back dated 50 times and I
18 want to show you something. You know, Mr. Massella saw this
19 and he said, oh, my God, what the hell is this. He thought
20 Martin Shkreli dated this. And this is one of the cockamamie
21 signature pages that was scanned in sideways that the
22 government showed you and here is Martin Shkreli's signature
23 and the date is really 11/29/12 and their position is this is
24 part of the back dating.

25 Jackson Su put that date down. When Jackson Su

Summation - Brafman

5411

1 testified to that it was like, whoa, if he doesn't testify to
2 that, everybody assumes Martin Shkreli signed it and dated it.
3 Why did you put down November 29th? Because it wasn't dated.
4 Who asked you to put it down? I just saw it there and it
5 wasn't dated. Jackson Su, you remember him? He's the guy who
6 has a whistleblower lawsuit against Retrophin. He quits, he
7 files a whistleblower lawsuit, he steals all of the records
8 from Retrophin and then he goes back, goes back to work for
9 seven months. He's the guy who couldn't remember if he was
10 arrested in Syracuse. If you're arrested in Syracuse you'd
11 remember. You remember if you've been arrested in Syracuse,
12 it doesn't suddenly escape your memory. I can tell you I
13 wasn't arrested in Syracuse, I don't have to think about it.
14 If you weren't arrested in Syracuse, you should be able to
15 answer that question. He looked and said, well, let me think,
16 I'm trying to think. Do you remember that moment?

17 Her Honor will tell you in part that if a witness
18 seems to have lied to you about something, you have a right to
19 reject their testimony or you have a right to consider that of
20 their testimony which you believe and reject that which you
21 don't believe. But when someone sits there and tells a jury
22 of New York people, I don't remember, I don't know whether I
23 was arrested in Syracuse and I'm the one who dated that
24 because it didn't have a date, and I filed a whistleblower
25 lawsuit and Jackson Su is always blaming somebody else. He

Summation - Brafman

5412

1 defied the arbitrator's award, he lost \$900,000. The
2 arbitrator wasn't right. The Court affirmed it and I have to
3 pay the arbitration award. I was screwed by the arbitrator.
4 He wasn't screwed by the arbitrator, he was screwed because
5 he's a dishonest man. And he came in here -- Jackson Su comes
6 in here. None the people who are part of this alleged
7 conspiracy, Fearnow shares, only Pierotti -- and we'll get to
8 him in a minute -- Biestek, Mulleady, Fernandez, Vaino,
9 Sullivan, Tilles, all the people who are supposed to be
10 involved in this conspiracy to manipulate the shares of this
11 stock, they're all available to the government. Their names
12 are all over everything and they're not called as witnesses.
13 I can't give them a non-prosecution agreement if the
14 government believes that they were involved and they in a
15 conspiracy to commit securities fraud.

16 So now we have Tim Pierotti, and Tim Pierotti is a
17 thief. Tim Pierotti is a thief. He took \$1.6 million from
18 Mr. Shkreli and he left and never came back to work. And
19 Martin keeps sending him emails, I want you to come back to
20 work. Tim Pierotti is not testifying against Martin Shkreli
21 because Martin Shkreli committed a crime. Tim Pierotti is
22 testifying against Martin Shkreli because Martin Shkreli being
23 Martin Shkreli wrote a nasty letter to Tim Pierotti's wife
24 when he left. But you know what the government didn't read
25 when they read that letter, they didn't read this paragraph,

Summation - Brafman

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1 which is highlighted in green. They didn't read this
2 paragraph. He's writing to his wife. He's telling his wife,
3 when Tim informed my partner Marek that he was going to sell
4 his wife's jewelry to pay for their mortgage, I immediately
5 summoned Tim to our offices and gave him a personal check for
6 5,000. Tim promptly deposited it that day. Tim likes taking
7 my money and doing nothing for it. I told Tim that if he ever
8 needed funds, he could rely on me to provide them for him
9 provided that he worked hard. Of course, Tim doesn't like
10 that part.

11 Martin feels betrayed by Pierotti, that's why this
12 letter is written. Maybe it's not a good idea to write a
13 letter to somebody's wife when you have a dispute, and maybe
14 it doesn't sit well when the government prosecutor puts it
15 into evidence, and maybe it offends some people, that's not
16 the point. He comes to him and says I'm going to sell my
17 wife's jewelry unless you give me money because I can't pay my
18 mortgage; he gives him money. And then when he asks him to
19 work in return for the shares, he doesn't work. That's not
20 part of a scheme, it's not part of a conspiracy. It's got
21 nothing to do with this case, ladies and gentlemen. There's
22 no manipulation of the market. None of the witnesses who were
23 supposed to be part of that conspiracy have testified and
24 there is no evidence to support Tim Pierotti. Tim Pierotti is
25 a liar. He's a liar and he's angry and he never was asked to

Summation - Brafman

5414

1 do anything wrong by Shkreli. Shkreli just wanted him not to
2 disappear. He wanted him to show up at work.

3 You know, half the people who testified in this
4 case, when they dealt with Evan Greebel, have said they
5 thought Evan Greebel was a good lawyer and that the Katten
6 Muchin firm was a good firm and therefore I was comforted by
7 the fact that he was the lawyer. Schuyler Marshall, who has
8 been a lawyer for 40 years. I'm correct, Mr. Shkreli also
9 mentioned the name Evan Greebel? Yes. You know that firm,
10 right? Yes. And that also gave you comfort because you knew
11 the firm Katten to be very well respected? Answer, yes,
12 that's right. Why can't Martin Shkreli believe the same
13 thing? Massella: I knew the Katten firm, it's a very good
14 firm. Aselage: Yes, I know the Katten firm, it's a very good
15 firm. I know Greebel is a lawyer, yes. And David Geller said
16 the same thing and Richardson said the same thing. And
17 Richardson said they paid him a lot of money and they thought
18 they were doing a great job. Why can't Martin Shkreli rely on
19 the fact that his lawyer, Evan Greebel, who is a partner in a
20 big firm that everybody else respects is doing a good job. It
21 is not leading him into crimes, he's helping him. And, yes,
22 there's some nasty email exchanges between Greebel and Shkreli
23 and that happens even with an honest client and an honest
24 lawyer, sometimes you don't like the exchange. Sometimes you
25 tell your lawyer to go to hell because you don't like the

Summation - Brafman

5415

1 advice you're getting. That doesn't mean you're involved in
2 the commission of a crime. That happens, ladies and
3 gentlemen.

4 Your Honor, I'm not going to be able to finish
5 tonight, I mean unless the people want to stay. I've got at
6 least another 20 minutes.

7 THE COURT: How are the jurors feeling? Would you
8 like to resume in the morning?

9 THE JURORS: Yes.

10 THE COURT: Yes.

11 MR. BRAFMAN: Okay, thank you.

12 THE COURT: Thank you for your ongoing attention.
13 Please remain open minded, do not discuss the case, avoid all
14 media coverage about the case and about Mr. Shkreli.

15 We will see you in morning. Thank you so much for
16 your attention. We will see you at 9 o'clock as usual. Thank
17 you.

18 (Jury exits courtroom.)

19 THE COURT: All right, thank you. I will see you in
20 the morning and I would ask the parties to please submit the
21 draft "affiliate" definition you'd like to have incorporated.

22 MR. AGNIFILO: Yes, Judge.

23 THE COURT: You might also suggest where it might be
24 a stand-alone since it's not really an element, but we will
25 consider your submission.

Summation - Brafman

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1 MS. KASULIS: Okay.

2 MR. AGNIFILO: When do you want it? I know as soon
3 as possible.

4 THE COURT: Well, soon because we have to put it in
5 the instructions, so...

6 MR. AGNIFILO: Right.

7 MR. SRINIVASAN: We can do it right now, Judge.

8 THE COURT: All right. Perfect.

9 MR. AGNIFILO: We'll do it.

10 THE COURT: Okay. Thank you.

11 So do you want me to wait?

12 MR. AGNIFILO: No.

13 THE COURT: You'll email it, you'll submit it.

14 MR. SRINIVASAN: We can write it or email it.

15 THE COURT: Or you can send a letter and say it's a
16 joint submission, you reached an agreement filed on ECF I can
17 get access to it.

18 MR. AGNIFILO: Okay.

19 MR. SRINIVASAN: We'll do that, yes.

20 THE COURT: Thank you.

21 (Whereupon, the trial adjourned at 5:28 p.m. to
22 resume Friday, July 28, 2017 at 9:00 a.m.)
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25